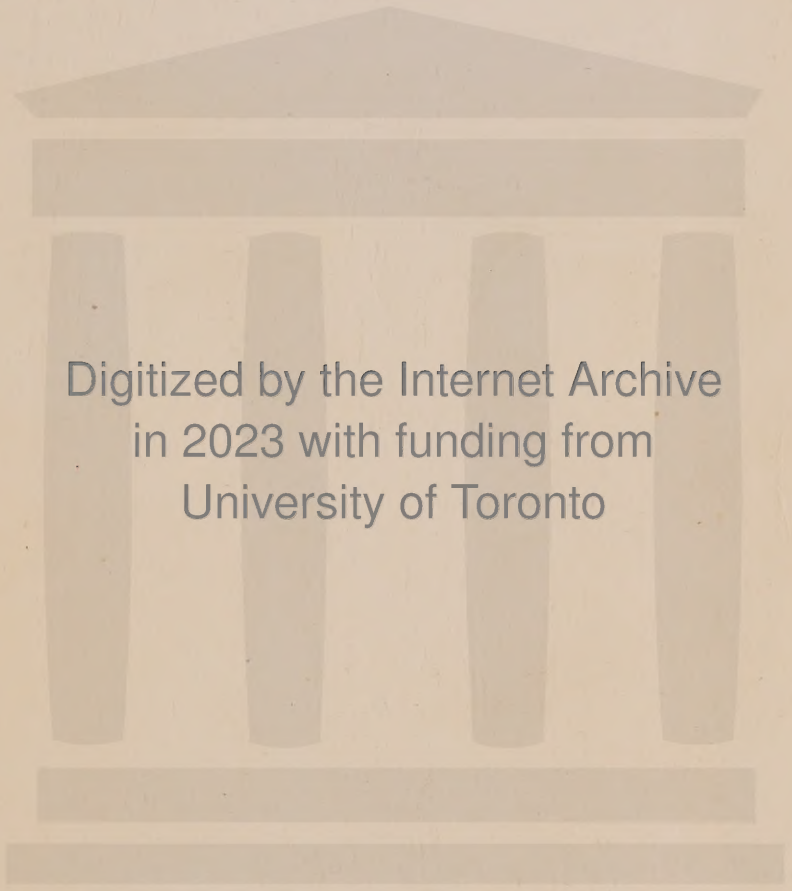

SNOW'S CRIMINAL CODE OF CANADA

TOGETHER WITH THE CANADA EVIDENCE ACT, THE EXTRADITION ACT, AND OTHER ACTS RELATING TO THE CRIMINAL LAW

SECOND EDITION ANNOTATED

BY

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CHAPTER 146.

An Act respecting the Criminal Law.

SHORT TITLE.

1. This Act may be cited as the Criminal Code. 55-56 V., c 29, s. 1.

INTERPRETATION.

2. Definition.—In this Act, unless the context otherwise requires,—

(1) '**any Act**,' or '**any other Act**,' includes any Act passed or to be passed by the Parliament of Canada, or any Act passed by the legislature of the late province of Canada, or passed or to be passed by the legislature of any province of Canada, or passed by the legislature of any province now a part of Canada before it was included therein;

(2) '**Attorney General**' means the Attorney General or Solicitor General of any province in Canada in which any proceedings are taken under this Act, and, with respect to the Northwest Territories and the Yukon Territory, the Attorney General of Canada;

(3) '**banker**' includes any director of any incorporated bank or banking company;

(4) '**bank-note**' includes all negotiable instruments issued by or on behalf of any person, body corporate, or company carrying on the business of banking in any part of the world, or issued by the authority of the Parliament of Canada, or any governor or other authority lawfully authorized thereto in any of His Majesty's dominions, or by the authority of any foreign

prince, or state or government, and intended to be used as equivalent to money, either immediately upon their issue or at some time subsequent thereto, and all bank bills and bank post bills;

(5) '**cattle**' includes any horse, mule, ass, swine, sheep or goat, as well as any neat cattle or animal of the bovine species, and by whatever technical or familiar name known, and shall apply to one animal as well as to many;

(6) '**chief constable**' includes the chief of police, city marshal or other head of the police force of any city, town, incorporated village or other municipality, district or place, and in the province of Quebec, the high constable of the district, and means any constable of a municipality, district or place which has no chief constable or deputy chief constable;

(7) '**Court of Appeal**' includes,

(a) in the province of Ontario, the Court of Appeal for Ontario ,

(b) in the province of Quebec, the Court of King's Bench, appeal side,

(c) in the provinces of Nova Scotia, New Brunswick and British Columbia, the Supreme Court in banc,

(d) in the province of Prince Edward Island, the Supreme Court,

(e) in the province of Manitoba, the Court of Appeal,

(f) in the provinces of Saskatchewan and Alberta, the Supreme Court of the Northwest Territories in banc, until the same is abolished, and thereafter such court as is by the legislature of the said provinces respectively substituted therefor;

(g) in the Yukon Territory, the Supreme Court of Canada;

(8) '**Copper coin**' includes any coin of bronze or mixed metal and every other kind of coin other than gold or silver;

(9) '**Deputy chief constable**' includes deputy chief of police, deputy or assistant marshal or other deputy head of the police force of any city, town, incorporated village, or other municipality, district or place, and, in the province of Quebec, the deputy high constable of the district;

(10) '**District, county or place**,' includes any division of any province of Canada for purposes relative to the administration of justice in the matter to which the context relates;

(11) '**Document of title to goods**' includes any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document

used in the ordinary course of business as proof of the possession or control of goods, authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to;

(12) '**Document of title to lands**' includes any deed, map, paper or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real property, or to any interest in any real property, or any notarial or registrar's copy thereof, or any duplicate instrument, memorial, certificate or document authorized or required by any law in force in any part of Canada respecting registration of titles, and relating to such title;

(13) '**Every one**,' '**person**,' '**owner**,' and other expressions of the same kind include His Majesty and all public bodies, bodies corporate, societies, companies, and inhabitants of counties, parishes, municipalities or other districts in relation to such acts and things as they are capable of doing and owning respectively;

Under this section it has been held, that since the word "persons" and other expressions of the same kind include corporations only "in relation to such acts and things as they are capable of doing," a company cannot be indicted for manslaughter. R. vs. Great West Laundry Co. (1900), 3 C. C. C., 514 (Man.) See also R. vs. Birmingham & Gloucester Ry. Co. (1842), 3 Q. B., 223; R. vs. Great North of England Ry. Co. (1846), 9 Q. B., 315; R. vs. Pocock (1851), 17 Q. B., 34; Pharmaceutical Society vs. London & Provincial Supply Association (1880), L. R., 5 A. C., 857.

(14) '**Explosive substance**' includes any materials for making an explosive substance; also any apparatus, machine, implement or materials, used or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; and also any part of any such apparatus, machine or implement;

(15) '**Form**' means a form in Part XXV .of this Act, and '**section**' means a section of this Act;

(16) '**Indictment**' and '**count**' respectively include information and presentment as well as indictment, and also any plea, replication or other pleading, any formal charge under section 873 A, and any record;

(17) '**Intoxicating liquor**' means and includes any alcoholic, spirituous, vinous, fermented or other intoxicating liquor, or any mixed liquor a part of which is spirituous or vinous, fermented or otherwise intoxicating and any such liquor shall be presumed to be intoxicating if it contains more than two and one-half per cent. of proof spirits.

(18) '**Justice**' means a justice of the peace, and includes two or more justices, if two or more justices act or have jurisdiction, and also a police magistrate, a stipendiary magistrate and any person having the power or authority of two or more justices of the peace;

(19) '**Loaded arms**' includes any gun, pistol or other arm loaded with gunpowder, or other explosive substance, and ball, shot, slug or other destructive material, or charged with compressed air and ball, shot, slug or other destructive material;

(20) '**Military law**' includes the Militia Act and any orders, rules and regulations made thereunder, the King's Regulations and orders for the Army; any Act of the United Kingdom or other law applying to His Majesty's troops in Canada, and all other orders, rules and regulations of whatsoever nature or kind to which His Majesty's troops in Canada are subject;

(21) '**Municipality**' includes the corporation of any city, town, village, county, township, parish or other territorial or local division of any province of Canada, the inhabitants whereof are incorporated or have the right of holding property for any purpose;

(22) '**Newspaper**,' in the sections of the Act relating to defamatory libel, means any paper, magazine or periodical containing public news, intelligence or occurrences, or any remarks or observations thereon, printed for sale and published periodically or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two such papers, parts or numbers, and also any paper, magazine or periodical printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding thirty-one days, and containing only or principally advertisements;

(23) '**Night**' or '**night time**' means the interval between nine o'clock in the afternoon and six o'clock in the forenoon of the following day, and 'day' or 'day time' includes the interval between six o'clock in the forenoon and nine o'clock in the afternoon of the same day;

(24) '**Offensive weapon**' or '**weapon**' includes any gun or other firearm, or air-gun, or any part thereof, or any sword, sword blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger, knife, or other instrument intended for cutting or stabbing, or any metal knuckles, or other deadly or dangerous weapon, and any instrument or thing intended to be used as a weapon, and all ammunition which may be used with or for any weapon;

(25) "**Part**' means a Part of this Act;

(26) '**Peace officer**' includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, and justice of the peace, and also the warden, keeper or guard of a penitentiary and the gaoler or keeper of any prison, and any police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace, or for the service or execution of civil process;

(27) '**Public department**' includes the Admiralty and War Department, and also any public department or office of the Government of Canada, or of the public or civil service thereof, or any branch of such department or office;

(28) '**Public stores**' includes all stores under the care, superintendence or control of any public department as herein defined, or of any person in the service of such department;

(29) '**Public officer**' includes any inland revenue or customs officer, officer of the army, navy, marine, militia, Royal Northwest mounted police, or other officer engaged in enforcing the laws relating to the revenue, customs, trade or navigation of Canada;

(30) '**Prison**' includes any penitentiary, common gaol, public or reformatory prison, lock-up, guard room or other place in which persons charged with the commission of offences are usually kept or detained in custody;

(31) '**Prize fight**' means an encounter or fight with fists or hands, between two persons who have met for such purpose by previous arrangement made by or for them;

(32) '**Property**' includes

(a) every kind of real and personal property, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods,

(b) not only such property as was originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise,

(c) any postal card, postage stamp or other stamp issued or prepared for issue by the authority of the Parliament of Canada, or of the legislature of any province of Canada, for the payment to the Crown or any corporate body of any fee, rate or duty, and whether still in the possession of the Crown or of any person or corporation;

(33) '**Shipwrecked person**' includes any person belonging

to, on board of, or having quitted any vessel wrecked, stranded or in distress at any place in Canada;

(34) '**Stores**' includes all goods and chattels, and any single store or article;

(35) '**Superior court of criminal jurisdiction**' means and includes,

(a) in the province of Ontario, the High Court of Justice for Ontario,

(b) in the province of Quebec, the Court of King's Bench,

(c) in the provinces of Nova Scotia, New Brunswick, and British Columbia, the Supreme Court,

(d) in the province of Prince Edward Island, the Supreme Court of Judicature,

(e) in the province of Manitoba, the Court of Appeal or the Court of King's Bench (Crown side),

(f) in the provinces of Saskatchewan and Alberta, the Supreme Court of the Northwest Territories, until the same is abolished, and thereafter such court as is by the legislatures of said provinces respectively substituted therefor,

(g) in the Yukon Territory, the Territorial Court;

(36) '**Territorial division**' includes any county, union of counties, township, city, town, parish or other judicial division or place to which the context applies;

(37) '**Testamentay instrument**' includes any will, codicil, or other testamentary writing or appointment, as well during the life of the testator whose testamentary disposition it purports to be as after his death, whether the same relates to real or personal property, or both;

(38) '**Trade combination**' means any combination between masters or workmen or other persons for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman in or in respect of his business or employment, or contract of employment or service;

(39) '**Trustee**' means a trustee on some express trust created by some deed, will or instrument in writing, or by parole, or otherwise, and includes the heir or personal representative of any such trustee, and every other person upon or to whom the duty of such trust has devolved or come, whether by appointment of a court or otherwise, and also an executor or administrator, and an official manager, assignee, liquidator or other like officer acting under any Act relating to joint stock companies, bankruptcy or insolvency, and any person who is, by the law of the province of Quebec, an *administrateur* or *fidéicom-*

missaire; and '**trust**' includes whatever is by that law an *administration* or *fidéicommis;*

(40) '**Valuable security**' includes any order, exchequer acquittance or other security entitling or evidencing the title of any person to any share or interest in any public stock or fund, whether of Canada or of any province thereof, or of the United Kingdom, or of Great Britain or Ireland, or of any British colony or possession, or of any foreign state, or in any fund of any body corporate, company or society, whether within Canada or the United Kingdom, or any British colony or possession, or in any foreign state or country, or to any deposit in any savings bank or other bank, and also includes any debenture, deed, bond, bill, note, warrant, order or other security for money or for payment of money, whether of Canada or of any province thereof, or of the United Kingdom, or of any British colony or possession, or of any foreign state, and any document of title to lands or goods wheresoever such lands or goods are situate, and any stamp or writing which secures or evidences title to or interest in any chattel personal, or any release, receipt, discharge or other instrument, evidencing payment of money, or the delivery of any chattel personal;

(41) '**Wreck**' includes the cargo, stores and tackle of any vessel and all parts of a vessel separated therefrom, and also the property of shipwrecked persons;

(42) '**Writing**' includes any mode in which, and any material on which, words or figures, whether at length or abridged, are written, printed or otherwise expressed, or any map or plan is inscribed.

(43) '**In Part XII. and in Parts XXII., XXIII., and XXIV of this Act 'Part III.**' means such section or sections of the said Part as are in force by virtue of any proclamation in the place or places with reference to which the Part is to be construed and applied; and 'a commissioner' means a commissioner under Part III. R.S., c. 151, s. 1; 55-56 V., c. 29, ss. 3, 92, 383, 420, 460, 519 and 839; 63-64 V., c. 46, s. 3; 1 E. VII., c. 41, s. 11; 6 E. VII., c. 4, s. 4.

3. Post card and chattel value.—For the purpose of this Act a postal card or any stamp referred to in the last preceding section shall be deemed to be a chattel, and to be equal in value to the amount of the postage, rate or duty expressed on its face in words or figures or both. 55-56 V., c. 29, s. 3.

4. Valuable security shall, where value is material, be

deemed to be of value equal to that of the unsatisfied money, chattel personal, share, interest or deposit, for the securing or payment of which, or delivery or transfer or sale of which, or for the entitling or evidencing title to which, such valuable security is applicable or to that of such money or chattel personal, the payment or delivery of which is evidenced by such valuable security. 55-56 V., c. 29, s. 3.

5. In this Act, unless the context otherwise requires,—

(a) **Finding the indictment** includes also exhibiting an information and making a presentment;

(b) having in one's possession includes not only having in one's own personal possession, but also knowingly

(i) having in the actual possession or custody of any other person, and

(ii) having in any place (whether belonging to or occupied by one's self or not) for the use or benefit of one's self or of any other person.

(2) **Joint possession.**—If there are two or more persons, and any one or more of them, with the knowledge and consent of the rest, has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them. 55-56 V., c. 29, s. 3; 56 V., c. 32, s. 1.

6. Meaning of expressions in other Acts.—In every case in which the offence dealt with in this Act relates to the subject treated of in any other Act the words and expressions used herein in respect to such offence shall have the meaning assigned to them in such other Act. 55-56 V., c. 29, s. 4.

7. Carnal knowledge is complete upon penetration to any even the slightest degree, and even without the emission of seed. 55-56 V., c. 29, s. 266.

PART I.

GENERAL.

APPLICATION OF THIS ACT.

8. This Act not to affect H. M. forces.—Nothing in this Act shall affect any of the laws relating to the government of His Majesty's land or naval forces. 55-56 V., c. 29, s. 983.

9. Application of Act to Saskatchewan, Alberta and

the Territories.—Except in so far as they are inconsistent with the Northwest Territories Act and amendments thereto as the same existed immediately before the first day of September, one thousand nine hundred and five, the provisions of this Act extend to and are in force in the provinces of Saskatchewan and Alberta, the Northwest Territories, and, except in so far as inconsistent with the Yukon Act, the Yukon Territory. 55-56 V., c. 29, s. 983.

APPLICATION OF THE CRIMINAL LAW OF ENGLAND.

10. Criminal law of England applicable to Ontario.—The criminal law of England, as it existed on the seventeenth day of September, one thousand seven hundred and ninety-two, in so far as it has not been repealed by any Act of the Parliament of the United Kingdom having force of law in the province of Ontario, or by any Act of the Parliament of the late province of Upper Canada, or of the province of Canada, still having force of law, or by this Act or any other Act of the Parliament of Canada, and as altered, varied, modified or affected by any such Act, shall be the criminal law of the province of Ontario. R.S., c. 144, s. 1.

11. Criminal law of England applicable to British Columbia.—The criminal law of England as it existed on the nineteenth day of November, one thousand eight hundred and fifty-eight, in so far as it has not been repealed by any ordinary Act—still having the force of law—of the colony of British Columbia, or the colony of Vancouver Island, passed before the union of the said colonies, or of the colony of British Columbia passed since such union, or by this Act or any other Act of the Parliament of Canada, and as altered, varied, modified or affected by any such ordinance or Act, shall be the criminal law of the province of British Columbia. R.S., c. 144, s. 2.

12. Criminal law of England applicable to Manitoba.—The criminal law of England as it existed on the fifteenth day of July, one thousand eight hundred and seventy, in so far as it is applicable to the province of Manitoba, and in so far as it has not been repealed, as to the Province, by any Act of the Parliament of the United Kingdom, or by this Act or any other Act of the Parliament of Canada, and as altered, varied, modified or affected, as to the Province, by any such Act, shall be the criminal law of the province of Manitoba. 51 V., c. 33, s. 1.

EFFECT OF ACT ON REMEDIES.

13. Civil remedy not suspended.—No civil remedy for any act or omission shall be suspended or affected by reason that such act or omission amounts to a criminal offence. 55-56 V., c. 29, s. 534.

In the case of Paquet vs. Lavoie (1898), R.J.Q., 7 Q. B., 277, Blanchet, J., held that this section is not "criminal law" legislation, but legislation dealing with civil rights and is ultra vires of the Federal Parliament.

Semble, the establishment of the English criminal law, by the Quebec Act (14 Geo. III, cap. 83 Imp.) in the Provinces of Ontario and Quebec having been effected by a legislative body having absolute jurisdiction over both civil and criminal law, it must be taken as having introduced in the Province of Quebec the English law with respect to the suspension of civil remedies for criminal wrongs.

See note in 6 C.C.C., p. 320.

14. Distinction between felony and misdemeanor abolished.—The distinction between felony and misdemeanor is abolished, and proceedings in respect of all indictable offences, except so far as they are herein varied, shall be conducted in the same manner. 55-56 V., c. 29, s. 535.

A provincial Statute prior to Confederation, providing for the discharge from imprisonment in default of indictment of an accused person committed for a "felony" will apply equally to cases which were misdemeanours before the abolition by the Criminal Code of Canada of the distinction between felony and misdemeanour. R. vs. Cameron (1897), 1 C. C. C., 169 Que.

See also R. v. Fox, 7 C. C. C., 457.

15. When offence punishable under more than one Act or law.—Where an act or omission constitutes an offence, punishable on summary conviction or on indictment, under two or more Acts, or both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of such Acts, or at common law, but shall not be liable to be punished twice for the same offence. 55-56 V., c. 29, s. 933.

R. vs. Mason (1867), 17 U. C. C. P., 534.

JUSTIFICATION OR EXCUSE.

16. Common law rule in force.—All rules and principles of the common law which render any circumstances a justification or excuse for any act, or a defence to any charge, shall remain in force and be applicable to any defence to a charge under this Act except in so far as they are hereby altered or are inconsistent herewith. 55-56 V., c. 29, s. 7.

The common law is not abrogated by the Code, and will still be applicable in cases for which no provision has been made in the Code, as well to their prosecution as defence. Even in cases provided for by the Code, the common law jurisdiction as to crime is still operative except where there is a repugnancy in which event the Code will prevail. R. v. Cole, 12 February, 1902, per Boyd, C. and Ferguson, J.

See Brown & Hadley's Com. 119. Marsh v. Loader, 11 W. R., 784.

The defence of drunkenness comes under this section.

Champerty is a criminal offence at common law.

Meloche v. Deguire, 8 C. C. C., 89 (Supreme Court).

17. Children under seven.—No person shall be convicted of any offence by reason of any act or omission of such person when under the age of seven years. 55-56 V., c. 29, s. 9.

This is in accordance with the common law under which a child under the age of seven years is *doli incapax* and no evidence was admissible to rebut that presumption. Marsh v. Loader, 14 C. B. N. S., 535.

18. Children between seven and fourteen.—No person shall be convicted of an offence by reason of an act or omission of such person when of the age of seven, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct, and to appreciate that it was wrong. 55-56 V., c. 29, s. 10.

This is a rebuttable presumption of incapacity. It has been held that this section refers exclusively to the mental capacity necessary to distinguish between right and wrong. R. v. Hartlen, 2 C. C. C., 12.

See also R. v. Owen (1830), 4 C. & P., 236; Spigurnal's case, 1 Hale, 26; R vs. Brimilow (1839), 9 C. & P., 366; R. vs. Brine, (1900), 33 N. S. R., 43; R. vs. Carvery, 11 C. C. C., 331. Cases collected in I Russel Cr. 109-112

By Criminal Code, sec. 298, it is enacted that no one under the age of fourteen years can commit the offence of rape.

19. Insanity.—No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong.

2. **Delusions.**—A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, under the provisions hereinafter contained, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

3. **Presumption of sanity.**—Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved. 55-56 V., c. 29, s. 11.

The three stages of the law regarding the recognition of insanity as an excuse for crime are well illustrated, respectively, by the following cases: (1) R. vs. Arnold (1724), 16 St. Tr., 764; (2) R. vs. Bellingham (1812), I "Russel on Crimes" 118; (3) R. vs. McNaghten (1843), 10 Cl. & F., 200.

The present state of the law is that insanity is a good defence when it is shewn (1), that the mind of the accused was affected to such an extent that, at the time of the commission of the act complained of, he was not able to realize that he was doing wrong, or (2) that, though sane in other ways, he had certain delusions which caused him to imagine a condition of affairs, which, had it been so, would have justified his act. See R. v. Offord (1831) 5 C. & P., 169; R. v. Oxford (1840), 9 C. & P., 525; R. v. Haynes (1859), 1 F. & F., 666; R. v. Townley (1863), 3 F. & F., 839.

"The delusions which indicate a defective insanity such as will relieve a person from criminal responsibility are delusions of the senses, or such as relate to facts or objects, not mere wrong notions or impressions, or of a moral nature; and the aberration must be mental, and not moral, to affect the intellect of the individual. It is not enough that they show a diseased or depraved state of mind, or an aberration of the moral feelings, and the sense of right and wrong being still, although is may be perverted, yet not destroyed; and the theory of a moral insanity, or insanity of the moral feelings, while the sense of right and wrong remains, is not to be reconciled with the legal doctrine on the subject." R. v. Burton (1863), 3 F. & F., 772.

In an accused person sets up insanity as a ground of defence, the burden of proving that fact rests upon him. R. v. Layton (1849) 4 Cox C. C., 149. As to procedure on the trial of an indictment where this defence is raised, see Code secs. 966-970.

Drunkenness does not constitute an excuse for crime. R. v. Pearson (1835), 2 Lewin C. C., 144. But its existence may be taken into consideration in determining the motive and general state of mind of the accused person. R. v. Gamlen (1858), 1 F. & F., 90; R. v. Meakin (1836), 7 C. & P., 297; R. v. Monkhouse (1849) 4 Cox C. C., 55; R. v. Cruse (1838), 8 C. & P., 541; R. v. Moore (1852), 3 C. & K., 319.

Delirium tremens, if it produces dementia rendering the person incapable of distinguishing right from wrong while affected by it, is such insanity as will constitute a defence. R. v. Davis (1881), 14 Cox C. C. 563.

20. Compulsion by threats.—Except as hereinafter provided, compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence shall be an excuse for the commission, by a person subject to such threats, and who believes such threats will be executed, and who is not a party to any association or conspiracy, the being a party to which rendered him subject to compulsion, of any offence other than treason as defined by this Act, murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson. 55-56 V., c. 29, s. 12.

See R. v. Dunnett, (1844), 1 Car. and K. 425; R. v. McGrowther, 18 St. Trials, 394. Threats of future injury, or the command of any one not the husband of the offender, do not excuse the offence. Stephen's Digest, art. 31.

21. Compulsion of wife.—No presumption shall be made that a married woman committing an offence does so under compulsion because she commits it in the presence of her husband. 55-56 V., c. 29, s. 13.

This abrogates the old Common Law rule. See R. v. Torpey (1871), 12 Cox C. C., 45; Brown v. Atty Gen. of N. Z. (1898), A. C., 234; R. v. Dykes, 15 Cox C. C., 771.

As to a husband or wife being an accessory after the fact in respect of an offence committed by the other of them, see Code sec. 71.

22. Ignorance of the law.—The fact that an offender is ignorant of the law is not an excuse for any offence committed by him. 55-56 V., c. 29, s. 14.

All persons are bound to know and obey the laws. R. v. Mailloux, 3 Pugsley (N. B.), 493; R. v. Moodie, 20 U. C. Q. B., 399.

Although ignorance of the law is not a defence, it constitutes a ground for an application to the executive for mercy. R. v. Madden, L. C. Jur., 344. See also R. v. Esop (1836), 7 C. & P., 456; Lopez and Sattler's case (1858), D. & B.'s Crown cases, 525; R. v. Bailey (1799), Russ & Ryan, 1.

23. Execution of sentence.—Every ministerial officer of any court authorized to execute a lawful sentence, and every gaoler, and every person lawfully assisting such ministerial officer or gaoler, is justified in executing such sentence. 55-56 V., c. 29, s. 15.

This section affords an illustration of homicide which is not criminal.

24. Execution of process.—Every ministerial officer of any court duly authorized to execute any lawful process of such court, whether of a civil or criminal nature, and every person lawfully assisting him, is justified in executing the same.

2. **Gaoler.**—Every gaoler who is required under such process to receive and detain any person is justified in receiving and detaining him. 55-56 V., c. 29, s. 16.

As to irregular process, see sec. 29.

25. Execution of warrants.—Every one duly authorized to execute a lawful warrant issued by any court or justice of the peace or other person having jurisdiction to issue such warrant, and every person lawfully assisting him, is justified in executing such warrant.

2. **Gaoler.**—Every gaoler who is required under such warrant to receive and detain any person is justified in receiving and detaining him. 55-56 V., c. 29, s. 17.

It has been held that in the execution of a criminal process the officer charged therewith may, when necessary, break the outer door of the house. Harvey v. Harvey (1884) L. R., 26 C. D., 644.

A prosecution under the "Canada Temperance Act," is a criminal matter. R. v. Calhoun (1888), 20 N. S. R., 395; Messenger v. Parker (1885), 18 N. S. R., 237; Vanasse v. Trask (1894), 27 N. S. R., 329.

By Code sec. 661 every warrant authorized by this Act may be issued and executed on a Sunday or statutory holiday.

To constitute an arrest, the party need not be touched by the officer, it being sufficient if he is commanded to give himself up and does so. 2 Bishop Cr. Law 33.

26. Execution of erroneous sentence or process.—If a sentence is passed or process issued by a court having jurisdiction under any circumstances to pass the sentence or issue such process, or if a warrant is issued by a court justice or person having jurisdiction under any circumstances to issue the warrant, the sentence passed or process or warrant issued shall be sufficient to justify the officer or person thereby authorized, to execute the same, and every gaoler and person lawfully assisting in executing or carrying out such sentence, process or warrant, although the court passing the sentence or issuing the process had not in the particular case authority to pass the sentence or to issue the process, or although the court, justice or other person in the particular case had no jurisdiction to issue, or exceeded its or his jurisdiction in issuing, the warrant, or was, at the time when such sentence was passed or process or warrant issued, out of the district in or for which such court, justice or person was entitled to act. 55-56 V., c. 29, s. 18.

A search warrant affords absolute justification to the officer executing it if it has been issued by competent authority and is valid on its face, although the warrant may in fact be bad, and although it be set aside by reason of a failure to comply with legal requirements. Sleeth v. Hurlbert (1896), 3 C. C. C., 197. See also Phillips v. Byron (1721), 1 Strange, 509; Parsons v. Lloyd, 2 Wm. Bl. 845; R. v. Harrison (1812), 15 East 615, note *d.*; Codrington v. Lloyd (1839), 8 A. & E., 449.

27. Sentence or process without jurisdiction.—Every officer, gaoler or person executing any sentence, process or warrant, and every person lawfully assisting such officer, gaoler or person, shall be protected from criminal responsibility if he acts in good faith under the belief that the sentence or process was that of a court having jurisdiction, or that the warrant was that of a court, justice or other person having authority to issue warrants, and if it be proved that the person passing the sentence or issuing the process acted as a court under colour of having some appointment or commission lawfully authorizing him to so act, or that the person issuing the warrant acted as a court, justice or other person having such authority, although in fact such appointment or commission did not exist or had

expired, or although in fact the court or the person passing the sentence or issuing the process was not the court or the person authorized by the commission to act, or the person issuing the warrant was not duly authorized so to act. 55-56 V., c. 29, s. 19.

28. Arresting wrong person.—Every one duly authorized to execute a warrant to arrest, who thereupon arrests a person, believing in good faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

2. **Assisting in such arrest.**—Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every gaoler who is required to receive and detain such person, shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant. 55-56 V., c. 29, s. 20.

The right of civil action for the wrongful arrest is not affected by this section.

At Common Law, a constable executing a warrant would have been liable, if he arrested a person other than the one described in the warrant, even if the former should be the one whom it was wished to arrest. But an officer arresting for felony was justified, when no warrant was issued, even if by mistake he took the wrong person into custody. See Hore v. Bush, 1 M. & Gr., 775: R. v. Hood. (1830), Moody's C. C. R., 281.

29. Irregular warrant or process.—Every one acting under a warrant or process which is bad in law on account of some defect in substance or in form apparent on the face of it, if he in good faith and without culpable ignorance and negligence believes that the warrant or process is good in law, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law, and ignorance of the law shall in such case be an excuse.

2. **Question of law.**—It shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in the belief of such person that the warrant or process is good in law. 55-56 V., c. 29, s. 21.

This section, as well as secs. 27 and 28, refers only to the criminal responsibility for the unlawful act. Where sec. 26 applies, the process is a justification, and neither civil nor criminal responsibility accrues.

See Gaul v. Township of Ellice (1902), 6 C. C. C., 15.

30. Arrest by peace officer.—Every peace officer who, on reasonable and probable grounds, believes that an offence for which the offender may be arrested without warrant has been committed, whether it has been committed or not, and who, on reasonable and probable grounds, believes that any person has committed that offence, is justified in arresting such person without warrant, whether such person is guilty or not. 55-56 V., c. 29, s. 22.

This section not only justifies (i. e., protects from criminal or civil proceedings the officer making the arrest), but also authorizes the arrest; and it applies to cases in which only a peace officer may arrest without a warrant, as well as those where it can be made by others without a warrant.

But a justice of the peace who issues a warrant illegally without having received a sworn information is liable in trespass for the arrest made thereunder, and he cannot under this section justify the fact that he ordered a constable to make the arrest by showing that he had a reasonable suspicion that an offence had been committed. McGinnis v. Dafoe (1896), 3 C. C. C., 139.

But though the arrest is thus made under an invalid warrant, jurisdiction attaches to the magistrate as soon as the person arrested is brought before him, and a subsequent commitment will be maintained. McGinnis v. Dafoe, supra. See also R. v. Hughes (1879), L. R., 4 Q. B. D., 614; Re Maltby (1881), L. R., 7 Q. B. D., 18 at page 28 Grey v. Commissioners of Customs (1884), 48 J. P., 343. R. v. Cloutier (1898), 2 C. C. C 43; Mousseau v. City of Montreal (1898), Q. R., 12 S. C., 61; R. v. Sabeans (1903), 7 C. C. C., 498.

31. Persons assisting peace officer.—Every one called upon to assist a peace officer in the arrest of a person suspected of having committed such offence is justified in assisting, if he knows that the person calling on him for assistance is a peace officer, and does not know that there is no reasonable ground for the suspicion. 55-56 V., c. 29, s. 23.

As to what is "reasonable ground for the suspicion," see Allen v. Wright (1838), 8 C. & P., 522; Leete v. Harte (1868), L. R., 3 C. P., 322.

32. Arrest of persons found committing offence.—Every one is justified in arresting without warrant any person whom he finds committing any offence, for which the offender may be arrested without warrant or may be arrested when found committing. 55-56 V., c. 29, s. 24.

33. Arrest after commission of certain offences.—If any offence for which the offender may be arrested without warrant has been committed, any one who, on reasonable and probable grounds, believes that any person is guilty of that offence is justified in arresting him without warrant, whether such person is guilty or not. 55-56 V., c. 29, s. 25.

See Jordan v. McDonald (1898), 31 N. S. R., 129; McKenzie v. Gibson (1851), 8 U. C. Q. B., 100; R. v. McLean (1901), 5 C. C. C., 67.

34. Arrest during night.—Every one is protected from criminal responsibility for arresting without warrant any person whom he, on reasonable and probable grounds, believes he finds committing by night any offence for which the offender may be arrested without warrant. 55-56 V., c. 29, s. 26.

For a list of the offences for which the offender found in the act of committing may be arrested without warrant, see secs. 646-652.

"Found committing" means (1) either actually discovering the person in the commission of the offence, or (2) immediately or continuously pursuing him from the time he is seen committing the offence (even if seen by a person other than the one pursuing) until he is captured. R. v. Curran. (1828), 3 C. & P., 397; Hanway v. Boultbee (1830), 1 M. & R., 15; R. v. Howarth (1828), Moody's C. C. P. 207.

35. While committing offence.—Every peace officer is justified in arresting without warrant any person whom he finds committing any offence. 55-56 V., c. 29, s. 27.

36. By night.—Every one is justified in arresting without warrant any person whom he finds by night committing any offence.

2. **Loitering by night.**—Every peace officer is justified in arresting without warrant any person whom he finds lying or loitering in any highway, yard or other place by night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant. 55-56 V., c. 29, s. 28.

According to sec. 2 (23) night or night-time is the interval between 9 o'clock in the evening, and 6 o'clock the following morning.

37. Arrest during flight.—Every one is protected from criminal responsibility for arresting without warrant any person whom he, on reasonable and probable grounds, believes to have committed an offence and to be escaping from and to be freshly pursued by those whom he, on reasonable and probable grounds, believes to have lawful authority to arrest that person for such offence. 55-56 V., c. 29, s. 29.

A person doing the act mentioned in this section is protected from criminal responsibility, but he will still be liable to a civil action, if he has made an error in making the arrest.

The fact of the flight of the accused is a circumstance in the chain of evidence from which guilt may be inferred, unless it appear that the act was for another reason. Lawson's Presumptive Ev., 2nd ed., 619.

38. Statutory power of arrest.—Nothing in this Act shall take away or diminish any authority given by any Act in force

for the time being to arrest, detain or put any restraint on any person. 55-56 V., c. 29, s. 30.

39. Force in executing warrant, process or sentence.—Every one executing any sentence, warrant or process, or in making any arrest, and every one lawfully assisting him, is justified, or protected from criminal responsibility, as the case may be, in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, process or warrant can be executed or the arrest effected by reasonable means in a less violent manner. 55-56 V., c. 29, s. 31.

Where an officer of justice is resisted in the legal execution of his duty he may repel force by force, and if in doing so he kills the party resisting him, it is justifiable homicide. Archbold's Cr. Plead. (1900), 778; 1 Hale, 494; R. v. Porter, 12 Cox C. C., 444.

See Code sec. 167, as to neglect to aid peace officers in arresting offenders when required to do so.

40. Duty of person arresting.—It is the duty of every one executing any process or warrant to have it with him, and to produce it if required.

2. **Notice.**—It is the duty of every one arresting another, whether with or without warrant, to give notice, where practicable, of the process or warrant under which he acts, or of the cause of the arrest.

3. **Failure in duty.**—A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant, or his assistants, or the person arresting, of protection from criminal responsibility, but shall be relevant to the inquiry whether the process or warrant might not have been executed, or the arrest effected, by reasonable means in a less violent manner. 55-56 V., c. 29, s. 32.

Manner of arrest:—Chinn v. Morris, 2 C. & P., 361; Pocock v. Moore, Ry. & M., 321; McIntosh v. Demeray, 5 U. C. Q. B., 343. Ex parte Doherty, 5 C. C. C., 94

Right of search:—Mayer v. Vaughan (1902), 6 C. C. C., 68.

41. Peace officer preventing escape.—Every peace officer proceeding lawfully to arrest, with or without warrant, any person for any offence for which the offender may be arrested without warrant, and every one lawfully assisting in such arrest, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner. 55-56 V., c. 29, s. 33.

42. Private person preventing escape.—Every private person proceeding lawfully to arrest without warrant any person for any offence for which the offender may be arrested without warrant is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner, if such force is neither intended nor likely to cause death or grievous bodily harm. 55-56 V., c. 29, s. 34.

A peace officer may attempt to shoot an offender who is escaping, but a private person may not; the latter being only justified in using such force as is not likely to result either in death or in grievous bodily harm.

43. Preventing escape in other cases.—Every one proceeding lawfully to arrest any person for any cause other than an offence in the last section mentioned is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner, if such force is neither intended nor likely to cause death or grievous bodily harm. 55-56 V., c. 29, s. 35.

44. Preventing escape or rescue of arrested person.—Every one who has lawfully arrested any person for any offence for which the offender may be arrested without warrant is protected from criminal responsibility in using such force in order to prevent the rescue or escape of the person arrested as he believes, on reasonable grounds, to be necessary for that purpose 55-56 V., c. 29, s. 36.

See Archbold's Cr. Plead. (1900), 852.

45. Idem.—Every one who has lawfully arrested any person for any cause other than an offence for which the offender may be arrested without warrant is protected from criminal responsibility in using such force in order to prevent his escape or rescue as he believes, on reasonable grounds, to be necessary for that purpose, if such force is neither intended nor likely to cause death or grievous bodily harm. 55-56 V., c. 29, s. 37.

46. Preventing breach of peace.—Every one who witnesses a breach of the peace is justified in interfering to prevent its continuance or renewal and may detain any person committing or about to join in or renew such breach of the peace, in order to give him into the custody of a peace officer, if the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach

of the peace, or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace. 55-56 V., c. 29, s. 38.

47. Arrest in such case.—Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing such breach of the peace, or whom he, on reasonable and probable grounds, believes to be about to join in or renew such breach of the peace.

2. **Giving person in charge.**—Every peace officer is justified in receiving into custody any person given into his charge as having been a party to a breach of the peace by one who has, or whom such peace officer, upon reasonable and probable grounds, believes to have, witnessed such breach of the peace. 55-56 V., c. 29, s. 39.

A justice of the peace may apprehend, or cause to be apprehended by a verbal order merely, any person committing a breach of the peace in his presence. 2 Hale, 86. A constable may also arrest for a breach of the peace committed in his presence. 1 Hale, 587.

A private person cannot of his own authority arrest another for a bare breach of the peace after it is over. 3 Hawkins, P. C., 164.

48. Suppression of riot by magistrate.—Every sheriff, deputy sheriff, mayor or other head officer or acting head officer of any county, city, town or district, and every magistrate and justice of the peace, is justified in using, and ordering to be used, and every peace officer is justified in using, such force as he, in good faith, and on reasonable and probable grounds, believes to be necessary to suppress a riot, and as is not disproportioned to the danger which he, on reasonable and probable grounds, believes to be apprehended from the continuance of the riot. 55-56 V., c. 29, s. 40.

See for definition of Riot, Code sec. 88.

The neglect of a peace officer to do his duty in suppressing a riot is an indictable offence under Code sec., 94.

49. Suppression of riot by persons commanded thereto.—Every one, whether subject to military law or not, acting in good faith in obedience to orders given by any sheriff, deputy sheriff, mayor or other head officer or acting head officer of any county, city, town or district, or by any magistrate or justice, for the suppression of a riot, is justified in obeying the orders so given unless such orders are manifestly unlawful, and is protected from criminal responsibility in using such force as he, on reasonable and probable grounds, believes to be necessary for carrying into effect such orders.

2. **Question of law.**—It shall be a question of law whether any particular order is manifestly unlawful or not. 55-56 V., c. 29, s. 41.

Magistrates may call upon all subjects to render assistance when a riot occurs, and the latter may be given firearms for that purpose. R. v. Pinney, 5 C. & P., 261.

A person who omits to assist any sheriff, or peace officer in suppressing a riot is guilty of an indictable offence under sec. 95.

50. Suppression of riot by persons apprehending serious mischief.—Every one, whether subject to military law or not, who in good faith and on reasonable and probable grounds believes that serious mischief will arise from a riot before there is time to procure the intervention of any of the authorities aforesaid, is justified in using such force as he, in good faith and on reasonable and probable grounds, believes to be necessary for the suppression of such riot, and as is not disproportioned to the danger which he, on reasonable grounds, believes to be apprehended from the continuance of the riot. 55-56 V., c. 29, s. 42.

See at Common Law, Phillips v. Eyre, L. R., 6 Q. B., 15.

51. Protection of persons subject to military law.—Every one who is bound by military law to obey the lawful command of his superior officer is justified in obeying any command given him by his superior officer for the suppression of a riot, unless such order is manifestly unlawful.

2. **Question of law.**—It shall be a question of law whether any particular order is manifestly unlawful or not. 55-56 V., c. 29, s. 43.

See Code sec. 91, 92 and 93.

52. Use of force.—Every one is justified in using such force as may be reasonably necessary in order,—

(a) **To prevent commission of offence.**—To prevent the commission of any offence for which, if committed, the offender might be arrested without warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of any one; or,

(b) **Act amounting to offence.**—To prevent any act being done which he, on reasonable grounds, believes would, if committed, amount to any such offence. 55-56 V., c. 29, s. 44.

See R. v. Bourne, 5 C. & P., 120; R. v. Rose, 15 Cox C. C., 540.

53. Extent justified.—Every one unlawfully assaulted, not having provoked such assault, is justified in repelling force by

force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence.

2. Every one so assaulted is justified, though he causes death or grievous bodily harm, if he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purpose, and if he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm. 55-56 V., c. 29, s. 45.

The provocation may be given by blows, words or gestures, sec. 54 (2).

It is a good defence in justification, even of a wounding or maiming, to prove that the prosecutor assaulted or beat the defendant first, and that the defendant committed the alleged battery merely in his own defence. Archbold's Cr. Plead. (1900), 802. The difficulty arises in drawing the line between mere self-defence and fighting. R. v. Knock, 14 Cox C. C., 1.

A husband may justify a battery in defence of his wife, a wife in defence of her husband, a parent in defence of his child, a child in defence of his parent, a master in defence of his servant, and a servant in defence of his master. 1 Hawkins P. C. cap. 60, secs. 23, 24.

See also R. v. Theriault (1894), 2 C. C. C., 444; R. v. Smith (1837), 8 C. & P., 160; R. v. Bull (1839), 9 C. & P., 22; R. v. Driscoll, C. & M., 214.

54. Self defence in case of aggression.—Every one who has without justification assaulted another, or has provoked an assault from that other, may nevertheless justify force subsequent to such assault, if he uses such force under reasonable apprehension of death or grievous bodily harm from the violence of the person first assaulted or provoked, and in the belief, on reasonable grounds, that it is necessary for his own preservation from death or grievous bodily harm, if he did not commence the assault with intent to kill or do grievous bodily harm, and did not endeavour, at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm, and if before such necessity arose, he declined further conflict, and quitted or retreated from it as far as was practicable.

2. **Provocation.**—Provocation, within the meaning of this and the last preceding section, may be given by blows, words or gestures. 55-56 V., c. 29, s. 46.

A provocation given by mere words or gestures may be such as will reduce homicide to manslaughter.

In R. v. Rothwell (1871), 12 Cox C. C., 145, Blackburn, J. said: "As a general rule of law, no provocation of words will reduce the crime of murder to that of manslaughter; but under special circumstances there may be such a provocation of words as will have that effect; for instance, if the husband suddenly hearing from his wife that she had committed adultery, and he having no idea of such a thing before, were, thereupon, to kill her, it might be manslaughter. But the crime of homicide will

only be reduced to manslaughter when the person receiving the provocation, acts upon it immediately. If some time is allowed to elapse between the receiving of the provocation and the commission of the deed, it will be presumed that the person committed the deed not under stress of such provocation, but with malice and with the intention to kill; and in such a case he would be guilty of murder."

R. v. Kirkham, (1837), 8 C. & P., 115; R. v. Smith, (1837), 8 C. & P., 160; R. v. Kelly, (1848), 2 C. & K., 814; R. v. Shaw (1834), 6 C. & P., 372.

55. Prevention of insulting assault.—Every one is justified in using force in defence of his own person, or that of any one under his protection, from an assault accompanied with insult, if he uses no more force than is necessary to prevent such assault, or the repetition of it.

2. **Disproportionate hurt not justified.**—This section shall not justify the wilful infliction of any hurt or mischief disproportionate to the insult which the force used was intended to prevent. 55-56 V., c. 29, s. 47.

56. Defence of movable property.—Every one who is in peaceable possession of any movable property or thing, and every one lawfully assisting him, is justified in resisting the taking of such thing by any trespasser, or in retaking it from such trespasser, if in either case he does not strike or do bodily harm to such trespasser.

2. **Assault by trespasser.**—If, after any one, being in peaceable possession as aforesaid, has laid hands upon any such thing, such trespasser persists in attempting to keep it or to take it from the possessor, or from any one lawfully assisting him, the trespasser shall be deemed to commit an assault without justification or provocation. 55-56 V., c. 29, s. 48.

In the case of trespass in taking goods, the owner may justify beating the trespasser in order to make him desist. 1 Hale, 486; R. v. Wild, 2 Lewin C. C., 214.

57. Defence with claim of right.—Every one who is in peaceable possession of any moveable property or thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending such possession, even against a person entitled by law to the possession of such property or thing, if he uses no more force than is necessary. 55-56 V., c. 29, s. 49.

58. Defence without claim of right.—Every one who is in peaceable possession of any moveable property or thing, but neither claims right thereto nor acts under the authority of a person claiming right thereto, is neither justified nor protected from criminal responsibility for defending his possession against

a person entitled by law to the possession of such property or thing. 55-56 V., c. 29, s. 50.

59. Defence of dwelling house.—Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house, either by night or day, by any person with the intent to commit any indictable offence therein. 55-56 V., c. 29, s. 51.

Dwelling house is defined by sec. 335 (e.) See also Archbold Cr. Evid. (1900), 593; R. v. Westwood, R. & R., 495.

It has been held that a guest in a house is justified in defending the house. Curtis v. Hubbard, 4 Hill, N. Y., 437; Cooper's Case, Cro. Car., 544.

60. Same at night.—Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house by night by any person, if he believes, on reasonable and probable grounds, that such breaking and entering is attempted with the intent to commit any indictable offence therein. 55-56 V., c. 29, s. 52.

The mere threat of parties standing outside of a dwelling house that they will break in, does not justify the householder in shooting at and wounding them, unless the householder has first warned them to desist and depart or that he would fire. Spires v. Barrick, 14 U. C. Q. B., 420.

61. Defence of real property.—Every one who is in peaceable possession of any house or land, or other real property, and every one lawfully assisting him or acting by his authority, is justified in using force to prevent any person from trespassing on such property, or to remove him therefrom, if he uses no more force than is necessary.

2. **Assault by trespasser.**—If such trespasser resists such attempt to prevent his entry or to remove him such trespasser shall be deemed to commit an assault without justification or provocation. 55-56. V., c. 29, s. 53.

If A., a trespasser, enters B.'s house and refuses to leave, B. has a right to remove A. by force, but not to kick or strike him unless the force used to remove him be necessary. Wild's Case, 2 Lewin C. C., 214. But if the trespasser resists such force, the householder may use any degree of force necessary to defend himself and to remove the trespasser from the house. 1 Hale P. C., 486.

See also Hinchcliffe's case (1823), 1 Lewin C. C., 161.

62. Assertion of right to house or land.—Every one is justified in peaceably entering in the daytime to take possession

of any house or land to the possession of which he, or some person under whose authority he acts, is lawfully entitled.

2. **Assault in case of lawful entry.**—If any person, not having or acting under the authority of one having peaceable possession of any such house or land with a claim of right, assaults any one peaceably entering as aforesaid, for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

3. **Trespasser provoking.**—If any person having peaceable possession of such house or land with a claim of right, or any person acting by his authority, assaults any one entering as aforesaid, for the purpose of making him desist from such entry, such assault shall be deemed to be provoked by the person entering. 55-56 V., c. 29, s. 54.

63. Correction of child by force.—It is lawful for every parent, or person in the place of a parent, schoolmaster or master, to use force by way of correction towards any child, pupil or apprentice under his care, provided that such force is reasonable under the circumstances. 55-56 V., c. 29, s. 55.

See R. v. Conner (1836), 7 C. & P., 438; R. v. Cheeseman, (1836), 7 C. & P., 455; R. v. Hopley (1860), 2 F. & F., 202; R. v. Robinson, 7 C. C. C., 52; R. v. Gaul, 8 C. C. C., 178.

64. Master of ship.—It is lawful for the master or officer in command of a ship on a voyage to use force for the purpose of maintaining good order and discipline on board of his ship, provided that he believes, on reasonable grounds, that such force is necessary, and provided also that the force used is reasonable in degree. 55-56 V., c. 29, s. 56.

This includes the right of the master to inflict reasonable corporal punishment at sea on seamen for disobeying orders. The Agincourt, 1 Hagg, 271; Lamb v. Burnett, 1 Cr. & J., 291.

65. Surgical operations.—Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case. 55-56 V., c. 29, s. 57.

See Code sec. 246.

It must appear that there was gross ignorance or inattention to human life. R. v. Long, 4 C. & P., 423.

See also R. v. Spiller, 5 C. & P., 333; R. v. Ferguson, 1 Lewin, C. C., 181.

66. Excess.—Every one authorized by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess. 55-56 V., c. 29, s. 58.

R. v. Gaul, 8 C. C. C., 178.

67. Consent to death.—No one has a right to consent to the infliction of death upon himself.

2. **Causing death with consent.**—If such consent is given, it shall have no effect upon the criminal responsibility of any person by whom such death may be caused. 55-56 V., c. 29, s. 59.

It is uncertain to what extent any person has a right to consent to his being put in danger of death or bodily harm by the act of another. Burbidge Cr. Law, 201. See also R. v. Jessop, 16 Cox C. C., 204.

68. Obedience to "de facto" law.—Every one is protected from criminal responsibility for any act done in obedience to the laws for the time being, made and enforced by those in possession *de facto* of the sovereign power in and over the place where the act is done. 55-56 V., c. 29, s. 60.

PARTIES TO OFFENCES.

69. Who parties to offence.—Every one is a party to and guilty of an offence who,—

(a) actually commits it; or,

(b) does or omits an act for the purpose of aiding any person to commit the offence; or,

(c) abets any person in commission of the offence; or,

(d) counsels or procures any person to commit the offence.

2. **Common intention by several persons.**—If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose. 55-56 V., c. 29, s. 61.

By this and the following section accessories before the fact and aiders and abettors are declared to be guilty of the offence itself, and may be charged as principals in the first degree. As to accessories after the fact, see sec. 71. As to aiding and abetting suicide, see sec. 269.

To make a person an "aider and abettor" he must have been present either actually or constructively.

An "accessory" is one who takes an active, but subordinate part.

An "accomplice" seems to imply one who not only takes an active part, but positively aids in the accomplishment or completion of the crime.

R. v. Smith (1876), 38 U. C. Q. B., 218, 227.

See also R. v. Lloyd (1890), 19 O. R., 352; R. v. Roy, 3 C. C. C., 472; R. v. Hendrie, 10 C. C. C., 298; R. v. Finnessey, 10 C. C. C., 347; R. v. Harkness, 10 C. C. C., 193.

As to joint indictment of abettor and principal, see R. v. Burton, 13 Cox C. C., 71; R. v. Blais, 10 C. C. C., 354.

70. Person counselling offence.—Every one who counsels or procures another person to be a party to an offence of which that person is afterwards guilty, is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

2. **Idem.**—Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring. 55-56 V., c. 29, s. 62.

This and the preceding section abolish the common law distinction between principals and accessories before the fact. All are now principals, whether or not they are actual perpetrators of the crime.

A person who, with a guilty knowledge, assists a thief in concealing money, thereby "aids and abets" the thief, although he took no part in the theft itself, and he may therefore be convicted as a principal under sec. 69 (c).

R. v. Campbell (1889), 2 C. C. C., 357.

But aid rendered to a person after the former has committed the crime, does not make the person so giving the assistance liable as a principal unless he participated in what is really a continuation or completion of the offence.

R. v. Graham (1898), 2 C. C. C., 388.

If a person is an actual aider and abettor of a theft, he cannot be convicted of the offence of having subsequently received the goods stolen. R. v. Hodge (1898), 2 C. C. C., 350; R. v. Evans (1856)), 7 Cox C. C., 151; R. v. Perkins (1852), 2 Denison's C. C., 459.

But the mere fact that he counselled and procured the commission of the theft, and is thus liable to be convicted as a principal, under sec. 69, is no bar to his conviction for having received the goods knowing them to have been stolen. R. v. Hodge, supra.

A's sister, who lived in his house with him, but did not pay anything for rent or board, kept a liquor shop in the house, contrary to the provisions of the Canada Temperance Act. A was aware of this fact, but he did not receive any profit from the business. A was convicted as a principal.

Ex parte McCormack (1894), 32 N. B. R., 272. See also Ex parte William Kelly, Ex parte Ellen Kelly (1894), 32 N. B. R., 268.

A broker who merely acts as such for two parties, one a buyer and the other a seller, without having any pecuniary interest in the transaction beyond his fixed commission, and without any guilty knowledge on his part of the intention of the parties to gamble in stocks or merchandise, is not guilty, under this section, of being an accessory to the commission of the offences specified in sec. 231. R. v. Dowd (1899), R. J. Q., 17 S. C., 67.

A person who rents his house to another, knowing that the latter in-

tends to maintain it as a common bawly house, thereby assists another to commit an indictable offence, and may therefore be convicted as a principal offender.

R. v. Roy (1900), 3 C. C. C., 472.

71. Accessory after the fact.—An accessory after the fact to an offence is one who receives, comforts or assists any one who has been a party to such offence in order to enable him to escape, knowing him to have been a party thereto.

2. **Husband or wife.**—No married person whose husband or wife has been a party to an offence shall become an accessory after the fact thereto by receiving, comforting or assisting the other of them, and no married woman whose husband has been a party to an offence shall become an accessory after the fact thereto, by receiving, comforting or assisting in his presence and by his authority any other person who has been a party to such offence in order to enable her husband or such other person to escape. 55-56 V., c. 29, s. 63.

At common law, the term accessory after the fact only applied to felonies for in misdemeanors all were principals. R. v. Tisdale, 20 U. C. Q. B., 273; R. v. Campbell, 18 U. C. Q. B., 417.

Accessories after the fact to treason are liable to two years' imprisonment under sec. 76.

Accessories after the fact to murder are liable to imprisonment for life under sec. 267.

See also Code sec. 574.

Those are accessories after the fact who give any assistance to the person known to be the offender, in order to hinder his apprehension, trial or punishment.

Dalt. 530, 531; 1 Hale, 619, 621; 2 Hawk, cap. 29, sec. 26.

72. Attempts.—Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended whether under the circumstances it was possible to commit such offence or not.

2. **Question of law.**—The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law. 55-56 V., c. 29, s. 64.

It is immaterial, even at common law, whether or not it was possible to commit the offence under the circumstances. R. v. Brown (1889), 16 Cox C. C., 715; R. v. Ring (1892), 17 Cox C. C., 491.

To constitute a crime, it is necessary that there should be not only an act, but also a criminal intent. "Actus non fit reum, nisi mens sit rea." Broom's Legal Maxims, 226.

If a man knowingly does acts which are unlawful, the presumption of law is that the "mens rea" exists; and ignorance of the law will not excuse him. R. v. Mailloux, 3 Pugsley (N. B.), 493.

PART II.

OFFENCES AGAINST PUBLIC ORDER, INTERNAL AND EXTERNAL.

INTERPRETATION.

73. As to information illegally obtained or communicated.—In the sections of this Part relating to information illegally obtained or communicated, unless the context otherwise requires,—

(a) **Reference to place.**—Any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom or of the Government of Canada, or of any province, whether the place is or is not actually vested in His Majesty;

(b) **Reference to communications.**—Expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model or information itself or the substance or effect thereof only be communicated;

(c) '**Document**' includes part of a document;

(d) '**Model**' includes design, pattern and specimen;

(e) '**Sketch**' includes any photograph or other mode of expression of any place or thing;

(f) '**Office under His Majesty**' includes any office or employment in or under any department of the Government of the United Kingdom, or of the Government of Canada, or of any province. 55-56 V., c. 29, s. 76.

TREASON AND OTHER OFFENCES AGAINST THE KING'S AUTHORITY AND PERSON.

74. Treason is,—

(a) **Bodily harm to His Majesty.**—The act of killing His Majesty, or doing him any bodily harm tending to death or destruction, maim or wounding, and the act of imprisoning or restraining him; or,

(b) **Intention with overt act.**—The forming and manifesting by any overt act an intention to kill His Majesty, or to do him any bodily harm tending to death or destruction, maim or wounding, or to imprison or to restrain him; or,

(c) **Killing heir apparent.**—The act of killing the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or,

(d) **Intention with overt act.**—The forming and manifesting, by an overt act, an intention to kill the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or,

(e) **Conspiring to do His Majesty bodily harm.**—Conspiring with any person to kill His Majesty, or to do him any bodily harm tending to death or destruction, maim or wounding, or conspiring with any person to imprison or restrain him; or,

(f) **Levying war** against His Majesty either

(i) **To depose His Majesty.**—With intent to depose His Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland or of any other of His Majesty's dominions or countries, or

(ii) **To overawe His Majesty.**—In order, by force or constraint, to compel His Majesty to change his measures or counsels, or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada; or,

(g) **Conspiring to levy war** against His Majesty with any such intent or for any such purpose as aforesaid; or,

(h) **Instigating invasion.**—Instigating any foreigner with force to invade the said United Kingdom or Canada or any other of the dominions of His Majesty; or,

(i) **Assisting enemy.**—Assisting any public enemy at war with His Majesty in such war by any means whatsoever; or.

(j) **Violating person or wife of heir apparent.**—Violating, whether with her consent or not, a Queen consort, or the wife of the eldest son and heir apparent, for the time being, of the King or Queen regnant.

2. **Penalty.**—Every one who commits treason is guilty of an indictable offence and liable to suffer death. 55-56 V., c. 29, s. 65; 57-58 V., c. 57, s. 1.

Sir John Kelyng's Crown cases, p. 7; R. v. Lord George Gordon (1781), 2 Douglas, 500; R. v. Frost (1839), 9 C. & P., 129; R. v. Gallaher (1883), 15 Cox C. C., 291; R. v. Deasy (1883), 15 Cox C. C., 334.

Sec. 1140 provides that every prosecution for treason (except treason by killing the Sovereign or by an attempt to injure the person of the Sovereign) must be commenced within three years from the time of the commission of the offence. The same section (s.s. 2), provides that "no person shall be prosecuted, under secs. 74 and 78, for any overt act of treason expressed or declared by open and advised speaking unless information of such overt act, and of the words by which the same was expressed or declared, is given upon oath to a justice within six days after the words are spoken and a warrant for the apprehension of the offender is issued within ten days after such information is given."

No person shall be convicted of treason upon the evidence of one witness. See section 1002.

Section 897 lays down the special procedure which obtains in trials for treason.

75. Overt act.—In every case in which it is treason to conspire with any person for any purpose, the act of so conspiring, and every overt act of any such conspiracy, is an overt act of treason. 55-56 V., c. 29, s. 66.

See R. v. Hardy, 1 East P. C., 98; R. v. Sidney, 9 St. Tr. 817; R. v. Lovat, 18 St. Tr. 529.

76. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(a) **Accessories after the fact.**—Becomes an accessory, after the fact, to treason; or,

(b) **Omitting to prevent treason.**—Knowing that any person is about to commit treason does not, with all reasonable despatch, give information thereof to a justice of the peace, or use other reasonable endeavours to prevent the commission of the same. 55-56 V., c. 29, s. 67.

77. Levying war by subject of a state at peace with His Majesty.—Every subject or citizen of any foreign state or country at peace with His Majesty, who,—

(a) is or continues in arms against His Majesty within Canada; or,

(b) commits any act of hostility therein; or,

(c) enters Canada with intent to levy war against His Majesty, or to commit any indictable offence therein for which any person would, in Canada, be liable to suffer death; and, every subject of His Majesty who,—

(a) **Subjects assisting.**—Within Canada levies war against His Majesty in company with any of the subjects or citizens of any foreign state or country at peace with His Majesty; or,

(b) enters Canada in company with any such subjects or citizens with intent to levy war against His Majesty, or to commit any such offence therein; or,

(c) with intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against His Majesty, or to commit any such offence in Canada;

is guilty of an indictable offence and liable to suffer death. 55-56 V., c. 29, s. 68.

This offence may be tried either before a Superior Court of criminal jurisdiction, or by a militia general court-martial. The Superior Court has no discretion as to the punishment to be awarded, but a court-martial has.

Burbidge, Cr. Law Digest, 56.

78. Treasonable offences.—Every one is guilty of an indistable offence and liable to imprisonment for life who forms—

(a) **Intention to depose His Majesty.**—An intention to de-

pose His Majesty, from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland, or of any other of His Majesty's dominions or countries; or,

(b) **Intention to levy war.**—An intention to levy war against His Majesty within any part of the said United Kingdom, or of Canada, in order by force or constraint to compel him to change his measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada; or,

(c) **Intention to induce invasion.**—An intention to move or stir any foreigner or stranger with force to invade the said United Kingdom, or Canada or any other of His Majesty's dominions or countries under the authority of His Majesty;

and manifests any such intention by conspiring with any person to carry it into effect, or by any other overt act, or by publishing any printing or writing, 55-56 V., c. 29, s. 69.

A prosecution under this section cannot be commenced after the expiration of three years from the time of the commission of the offence. Sec. 1140 (2).

79. Conspiracy to intimidate a legislature.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who confederates, combines or conspires with any person to do any act of violence in order to intimidate, or to put any force or constraint upon, any legislative council, legislative assembly or house of assembly. 55-56 V., c. 29, s. 70.

Held in R. v. Bunting, 7 Ont. R., 524, that a conspiracy to bribe members of the legislature was a misdemeanour at common law, and as such was an indictable offence.

80. Assaults upon the King.—Every one is guilty of an indictable offence and liable to seven years' imprisonment, and to be whipped once, twice or thrice as the court directs, who,—

(a) **Acts intended to alarm or injure the King.**—Wilfully produces, or has, near His Majesty, any arm or destructive or dangerous thing with intent to use the same to injure the person of, or to alarm His Majesty; or,

(b) **Other similar acts.**—Wilfully and with intent to alarm or to injure His Majesty, or to break the public peace,

(i) points, aims or presents, or attempts to point, aim or present, at or near His Majesty, any firearm, loaded or not, or any other kind of arm,

(ii) discharges or attempts to discharge at or near His Majesty any loaded arm,

(iii) discharges or attempts to discharge any explosive material near His Majesty,

(iv) strikes, or strikes at, or attempts to strike, or strike at, His Majesty in any manner whatever,

(v) throws, or attempts to throw, anything at or upon His Majesty. 55-56 V., c. 29, s. 71.

81. Inciting to mutiny.—Every one is guilty of an indictable offence and liable to imprisonment for life, who for any traitorous or mutinous purpose, endeavours to seduce any person serving in His Majesty's forces by sea or land from his duty and allegiance to His Majesty, or to incite or stir up any such person to commit any traitorous or mutinous practice. 55-56 V., c. 29, s. 72.

A sailor who has been in the sick hospital for thirty days, and who is therefore not entitled to pay nor liable to a court-martial, is still "serving" within this section. R. v. Tierney, R. & R., 74.

82. Offence.—Every one is guilty of an offence punishable on indictment, or on summary conviction before two justices, who, not being an enlisted soldier in His Majesty's service, or a seaman in His Majesty's naval service,—

(a) **Persuading to desert.**—By words or with money, or by any other means whatsoever, directly or indirectly, persuades or procures, or goes about or endeavours to persuade, prevail on or procure, any such seaman or soldier to desert from or leave His Majesty's military or naval service; or,

(b) **Concealing deserter.**—Conceals, receives or assists any deserter from His Majesty's military or naval service, knowing him to be such deserter;

and is liable, on conviction under indictment, to fine and imprisonment in the discretion of the court, and on summary conviction before two justices, to a penalty not exceeding two hundred dollars, and not less than eighty dollars and costs, and in default of payment to imprisonment for any term not exceeding six months. 55-56 V., c. 9, s. 73.

Section 657. "Every one who is reasonably suspected of being a deserter from His Majesty's service may be apprehended and brought for examination before any justice, and if it appears that he is a deserter he shall be confined in gaol until claimed by the military, or naval authorities or proceeded against according to law.

A conviction under this section, which follows the very words thereof, "conceal, receive, assist," is not bad for uncertainty. Nor is such a conviction bad because it provides that the penalty imposed thereby shall be "paid and applied according to law" (secs. 1036 and 1037). Nor is it necessary that the conviction should award costs against the defendant. In re Baker, (1899), 20 C. L., 16.

83. Resisting execution of search warrant.—Every one who resists the execution of any warrant authorizing the breaking open of any building to search for any deserter from His Majesty's military or naval service is guilty of an offence and liable, on summary conviction before two justices, to a penalty of eighty dollars. 55-56 V., c. 29. s. 74.

It is not lawful to break open any building in order to search for a deserter, unless a warrant for that purpose, founded on affidavit, has been obtained from a justice of the peace. See section 657, s. s. 2.

An indictment for treason or for offences against any of the sections 76 to 86, shall state overt acts, and evidence will only be admitted of such overt acts as are stated in the indictment.

See section 847.

84. Penalty.—Every one is guilty of an offence and liable, on summary conviction, to six months' imprisonment with or without hard labor, who,—

(a) **Persuading men to desert.**—Persuades any man who has been enlisted to serve in any corps of militia, or who is a member of or has engaged to serve in the Royal Northwest Mounted Police Force, to desert, or attempts to procure or persuade any such man to desert; or,

(b) **Assisting.**—Knowing that any such man is about to desert, aids or assists him in deserting; or,

(c) **Concealing.**—Knowing that any such man is a deserter, conceals him or aids or assists in his rescue. 55-56 V., c. 29, s. 75.

INFORMATION ILLEGALLY OBTAINED OR COMMUNICATED.

85. Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for one year, or to a fine not exceeding one hundred dollars, or to both imprisonment and fine, who,—

(a) **For Purpose of unlawfully obtaining.**—For the purpose of wrongfully obtaining information,

(i) **Entering fortress, etc.**—Enters or is in any part of a fortress, arsenal, factory, dockyard, camp, ship, office or other like place in Canada belonging to His Majesty, in which part he is not entitled to be, or,

(ii) **Obtaining after entry.**—When lawfully or unlawfully in any such place as aforesaid, either obtains any document, sketch, plan, model or knowledge of anything, which he is not entitled to obtain, or takes without lawful authority any sketch or plan, or

(iii) **Attempting to take sketch, etc., when outside.**—when outside any fortress, arsenal, factory, dockyard or

camp in Canada, belonging to His Majesty, takes, or attempts to take, without authority given by or on behalf of His Majesty, any sketch or plan of that fortress, arsenal, factory, dockyard or camp; or,

(b) **Communication without authority.**—Knowingly having possession of or control over any document, sketch, plan, model, or knowledge obtained or taken by means of any act which constitutes an offence against this and the next following section, at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the interests of the state, to be communicated at that time; or,

(c) **Communication in breach of confidence.**—After having been entrusted in confidence by some officer under His Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the naval or military affairs of His Majesty, wilfully, and in breach of such confidence, communicates the same when, in the interests of the state, it ought not to be communicated; or,

(d) **Communication to improper persons.**—Having possession of any document relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place belonging to His Majesty, or to the naval or military affairs of His Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the interests of the state, to be then communicated.

2. **Information for foreign state.**—Every one who commits any such offence intending to communicate to a foreign state any information, document, sketch, plan, model or knowledge obtained or taken by him, or entrusted to him as aforesaid, or communicates the same to any agent of a foreign state, is guilty of an indictable offence and liable to imprisonment for life. 55-56 V., c. 29, s. 77.

This, and the following section are an adaptation of the Imperial Statute 52 & 53 Vict. cap. 52, the Official Secrets Act 1889.

As to interpretation, see section 73.

By section 592, it is provided that no person shall be prosecuted for this offence without the consent of the Attorney General or of the Attorney General of Canada.

86. Communicating information acquired in office.—Every one who, by means of his holding or having held an office under His Majesty, has lawfully or unlawfully either obtained possession of or control over any document, sketch, plan or model, or acquired any information, and at any time corruptly,

or contrary to his official duty, communicates or attempts to communicate such document, sketch, plan, model or information to any person to whom the same ought not, in the interests of the state, or otherwise in the public interest, to be then communicated, is guilty of an indictable offence and liable,—

(a) **Penalty.**—If the communication was made, or attempted to be made, to a foreign state, to imprisonment for life; and,

(b) **Idem.**—In any other case, to imprisonment for one year, or to a fine not exceeding one hundred dollars, or to both imprisonment and fine.

2. **Application of section.**—This section shall apply to a person holding a contract with His Majesty, or with any department of the Government of the United Kingdom, or of the Government of Canada, or of any province, or with the holder of any office under His Majesty as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract who is under a like obligation of secrecy, as if the person holding the contract, and the person so employed, were respectively holders of an office under His Majesty. 55-56 V., c. 29, s. 78.

As to interpretation, see section 73.
Section 592 applies to this offence.
See R. v. Stuart (1899), Central Cr. Court, Archbold Cr. Plead., 965.

UNLAWFUL ASSEMBLIES AND RIOTS.

87. Definition of unlawful assembly.—An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear, on reasonable grounds, that the persons so assembled with disturb the peace tumultuously, or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.

2. **Intention not necessary.**—Persons lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in such a manner as would have made their assembling unlawful if they had assembled in that manner for that purpose.

3. **Exception.**—An assembly of three or more persons for the purpose of protecting the house of any one of their number against persons threeatning to break and enter such house in order to commit any indictable offence therein is not unlawful. 55-56 V., c. 29, s. 79.

See R. v. Rankin, 7 St. Tr. (N. S.), 711; R. v. Birt, 5 C. & P., 154; R. v. Clarkson, 17 Cox C. C., 483.

The decision in Beatty v. Gillbanks (1882), 15 Cox C. C., 138, is inapplicable.

A meeting lawfully convened may become unlawful if seditious words are spoken of such a nature as to be likely to produce a breach of the peace. R. v. Burns (1886), 16 Cox C. C., 355.

As to suppression of an unlawful assembly, see O'Kelly v. Harvey, 15, Cox C. C., 435; R. v. Jones, 6 St. Tr. (N. S.), 811.

For punishment, see section 89.

88. Definition of riot.—A riot is an unlawful assembly which has begun to disturb the peace tumultuously. 55-56 V., c. 29, s. 80.

For punishment and procedure, see secs. 90 to 97.

89. Punishment of unlawful assembly.—Every member of an unlawful assembly is guilty of an indictable offence and liable to one year's imprisonment. 55-56 V., c. 29, s. 81.

Unlawful assembly defined by section 87.

90. Punishment of riot.—Every rioter is guilty of an indictable offence and liable to two years' imprisonment with hard labour. 55-56 V., c. 29, s. 82.

To prove a person to be a rioter, it is not sufficient to merely shew that the riot took place, and that the accused was present among the rioters. It must be shewn that he did something by word or act to take part in, help or incite the riotous proceedings. R. v. Atkinson, 11 Cox C. C., 330.

91. Reading the Riot Act.—It is the duty of every sheriff, deputy sheriff, mayor or other head officer, and justice, of any county, city or town, who has notice that there are within his jurisdiction persons to the number of twelve or more unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, to resort to the place where such unlawful, riotous and tumultuous assembly is, and among the rioters, or as near to them as he can safely come, with a loud voice to command or cause to be commanded silence, and after that openly and with loud voice to make or cause to be made a proclamation in these words or to the like effect:—

Proclamation.—'Our Sovereign Lord the King charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence on conviction of which they may be sentenced to imprisonment for life.

'GOD SAVE THE KING.'

55-56 V., c. 29, s. 83.

The Riot Act is not validly proclaimed, if the concluding words of the proclamation, "God Save the King," are omitted. R. v. Childs, 4 C. & P., 442.

92. Penalty.—All persons are guilty of an indictable offence and liable to imprisonment for life who,—

(a) **Preventing proclamation.**—With force and arms wilfully oppose, hinder or hurt any person who begins or is about to make the said proclamation, whereby such proclamation is not made; or,

(b) **Not dispersing.**—Continue together to the unmber of twelve for thirty minutes after such proclamation has been made, or if they know that its making was hindered as aforesaid, within thirty minutes after such hindrance. 55-56 V., c. 29, s. 83.

Section 1140 provides that prosecutions for these offences must be commenced within one year from the commission of the offence.

93. Duty of officers.—If the persons so unlawfully, riotously and tumultuously assembled together, or twelve or more of them, continue together, and do not disperse themselves, for the space of thirty minutes after the proclamation is made or after such hindrance as aforesaid, it is the duty of every such sheriff, justice and other officer, and of all persons required by them to assist, to cause such persons to be apprehended and carried before a justice.

2. **Indemnification of officers.**—If any of the persons so assembled are killed or hurt in the apprehension of such persons or in the endeavour to apprehend or disperse them, by reason of their resistance, every person ordering them to be appehended or dispersed, and every person executing such orders, are indemnified against all proceedings of every kind in respect thereof.

3. **Section not restrictive.**—Nothing in this section contained shall, in any way, limit or affect any duties or powers imposed or given by this Act as to the suppression of riots before or after the making of the said proclamation. 55-56 V., c. 29, s. 84.

Respecting the duty of magistrates in times of riots, see the leading case of R. v. Pinney (1832), 5 C. & P., 254.
See also sections 48 to 51, and sections 94 and 95.

94. Neglect of peace officer to suppress riot.—Every sheriff, deputy sheriff, mayor or other head officer, justice, or other magistrate, or other peace officer, of any county, city, town, or district, who has notice that there is a riot within his jurisdiction, who, without reasonable excuse omits to do his duty in suppressing such riot, is guilty of an indictable offence and liable to two years' imprisonment. 55-56 V., c. 29, s. 140.

95. Neglect to aid peace officer thereat.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy sheriff, mayor, or other head officer, justice, magistrate, or peace officer in suppressing any riot, without reasonable excuse omits to do so. 55-56 V., c. 29, s. 141.

At common law, it was an indictable misdemeanour to refuse to assist a peace officer in quelling a riot. R. v. Brown, C. & Mar., 314.

96. Riotous destruction of property.—All persons are guilty of an indictable offence and liable to imprisonment for life who, being riotously and tumultuously asembled together to the disturbance of the public peace, unlawfully and with force demolish or pull down, or begin to demolish or pull down, any building, or any machinery, whether fixed or movable, or any erection used in farming land, or in carrying on any trade or manufacture, or any erection or structure used in conducting the business of any mine, or any bridge, wagon-way or track for conveying minerals from any mine. 55-56 V., c. 29, s. 85.

If rioters destroy a house by fire, the offence is within this section, and they need not be indicted for arson. R. v. Harris, Carr. & M., 661.
It is immaterial that the principal intent of the rioters was the capture or personal injury of an individual therein, if it was also their object to demolish the house. R. v. Batt, 6 C. & P., 329.

97. Riotous damage to property.—All persons are guilty of an indictable offence and liable to seven years' imprisonment who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force injure or damage any of the things mentioned in the last preceding section.

2. **Bona fides no defence.**—It shall not be a defence to a charge of an offence against this or the last preceding section that the offender believed he had a right to act as he did, unless he actually had such a right. 55-56 V., c. 29, s. 86.

UNLAWFUL DRILLING.

98. Prohibition of assemblies.—The Governor in Council is authorized from time to time to prohibit assemblies, without lawful authority, of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises movements or evolutions, and to prohibit persons when assembled for any other purpose from so training or drilling themselves or being trained or drilled.

2. **General or special.**—Any such prohibition may be general or may apply only to a particular place or district or to assemblies of a particular character, and shall come into operation from the publication in the *Canada Gazette* of a proclamation embodying the terms of such prohibition, and shall continue in force until the like publication of a proclamation issued by the authority of the Governor in Council revoking such prohibition.

3. **Penalty.**—Every person is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority and in contravention of such prohibition or proclamation,—

(a) **Being present for purpose of drilling others.**—Is present at or attends any such assembly for the purpose of training or drilling any other person to the use of arms or the practice of military exercises or evolutions; or,

(b) **Drilling others.**—At any assembly trains or drills any other person to the use of arms or the practice of military exercises or evolutions. 55-56 V., c. 29, s. 87.

The prosecution must be commenced within six months from the commission of the offence. See section 1140.

99. Being unlawfully drilled.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority, attends, or is present at, any such assembly as in the last preceding section mentioned, for the purpose of being, or who at any such assembly is, without lawful authority and in contravention of such prohibition or proclamation, trained or drilled to the use of arms or the practice of military exercises or evolutions. 55-56 V., c. 29, s. 88.

The prosecution must be commenced within six months from the commission of the offence. Section 1140.
See R. v. Ryan (1839), 2 M. & Rob., 213.

AFFRAYS AND DUELS.

100. Definition of affray.—An affray is the act of fighting in any public street or highway, or fighting to the alarm of the public in any other place to which the public have access.

2. **Penalty.**—Every one who takes part in an affray is guilty of an indictable offence and liable to one year's imprisonment with hard labour. 55-56 V., c. 29, s. 90.

The fighting must be in public, otherwise it is an assault. R. v. Hunt, 1 Cox C. C., 177.

101. Challenge to fight a duel.—Every one is guilty of an indictable offence and liable to three years' imprisonment who challenges or endeavours by any means to provoke any person to fight a duel, or endeavours to provoke any person to challenge any other person so to do. 55-56 V., c. 29, s. 91.

The sending of the challenge is the offence, and the offence is complete, if the letter be mailed, although it does not in fact reach the person to whom it is addressed. R. v. Williams (1810), 2 Camp., 506.

The seconds in a duel, and all other persons who are present thereat, encouraging and promoting the same, are equally guilty with the principal offender if one of the combatants are killed. R. v. Young (1838), 8 C. & P., 644. R. v. Cuddy (1843), 1 Car. & K., 210; R. v. Taylor (1875), L. R., 2 C. C. R., 147.

FORCIBLE ENTRY AND DETAINER.

102. Definition of forcible entry.—Forcible entry is where a person, whether entitled or not, enters in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, on land then in actual and peaceable possession of another.

2. **Definition of forcible detainer.**—Forcible detainer is where a person in actual possession of land, without colour of right, detains it in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, against a person entitled by law to the possession thereof.

3. **Question of law.**—What amounts to actual possession or colour of right is a question of law. 55-56 V., c. 29, s. 89.

A "forcible entry" is the act of going upon land with the intention of taking possession of the land itself. An entry for the purpose of taking away chattels on the land is not such a forcible entry, as is here contemplated; it is only a trespass, even though it is made contrary to the will of the occupant, and in a manner likely to cause a breach of the peace. R. v. Pike (1898), 2 C. C. C., 314. See also R. v. Smyth, (1832), 5 C. & P., 201.

Every one commits the offence of forcible entry, who, in order to take possession thereof, enters upon any lands or tenements in a violent manner, whether such violence consists in actual violence applied to any other person or in threats, or in breaking open any house, or in collecting together an unusual number of persons for the purpose of making such entry. Stephen's Digest of Criminal Law, p. 51.

The gist of the offence is the forcible depriving of the other's actual and peaceable possession in a manner likely to cause a breach of the peace. R. v. Cokely, 13 U. C. Q. B., 521.

Every one commits the offence called forcible detainer, who, having wrongfully entered upon any lands or tenements, detains such lands and tenements in a manner which would render an entry upon them for the purpose of taking possession forcible. Stephen's Digest of Criminal Law, p. 51.

103. Penalty.—Every one who forcibly enters or forcibly detains land is guilty of an indictable offence and liable to one year's imprisonment. 55-56 V., c. 29, s. 89.

PRIZE FIGHTS.

104. Challenging, etc.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one thousand dollars and not less than one hundred dollars, or to imprisonment for a term not exceeding six months, with or without hard labour, or to both, who sends or publishes, or causes to be sent or published or otherwise made known, any challenge to fight a prize fight, or accepts any such challenge, or causes the same to be accepted, or goes into training preparatory to such fight, or acts as trainer or second to any person who intends to engage in a prize fight. 55-56 V., c. 29, s. 93.

105. Engaging as principals.—Every one is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding twelve months and not less than three months, with or without hard labour, who engages as a principal in a prize fight. 55-56 V., c. 29, s. 94.

In R. v. Orton (1878), 14 Cox C. C., 226, it was held that a mere exhibition of skill in sparring was not illegal; but if the pugilists met intending to fight till one of them gave in from exhaustion or injury, it was a breach of the law, and a prize fight, and that the wearing of gloves made no difference.

See also Stephen's Digest of Criminal Law, p. 122; R. v. Billingham, 2 C. & P., 234; R. v. Perkins, 4 C. & P., 537.

Canadian decisions:—Steele v. Maher (1901), 6 C. C. C., 446; R. v. Littlejohn (1904), 8 C. C. C., 212.

106. Attending or promoting.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding twelve months, with or without hard labour, or to both, who is present at a prize fight as an aid, second, surgeon, umpire, backer, assistant or reporter, or who advises, encourages or promotes such fight. 55-56 V., c. 29, s. 95.

As to mere presence at a prize fight, see R. v. Coney (1882), 8 Q. B. D., 534, where it was held by Hawkins J., that, as nothing more had been proved against the accused than that they had been spectators, their conviction as principals in the second degree was wrong.

107. Leaving Canada to engage in prize fight.—Every inhabitant or resident of Canada is guilty of an offence and

liable, on summary conviction, to a penalty not exceeding four hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding six months, with or without hard labour, or to both, who leaves Canada with intent to engage in a prize fight without the limits thereof. 55-56 V., c. 29, s. 96.

108. When fight is not a prize fight.—If, after hearing evidence of the circumstances connected with the origin of the fight or intended fight, the person before whom the complaint is made is satisfied that such fight or intended fight was *bona fide* the consequence or result of a quarrel or dispute between the principals engaged or intended to engage therein, and that the same was not an encounter or fight for a prize, or on the result of which the handing over or transfer of money or property depended, such person may, in his discretion, discharge the accused or impose upon him a penalty not exceeding fifty dollars. 55-56 V., c. 29, s. 97.

INCITING INDIANS.

109. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who induces, incites or stirs up any three or more Indians, non-treaty Indians, or half-breeds, apparently acting in concert,—

(a) **Riotous request.**—To make any request or demand of any agent or servant of the Government in a riotous, routous, disorderly or threatening manner, or in a manner calculated to cause a breach of the peace; or,

(b) **Breach of the peace.**—To do any act calculated to cause a breach of the peace. 55-56 V., c. 29, s. 98.

110. Indictable offence.—Every one who incites any Indian to commit any indictable offence is guilty of an indictable offence and liable to imprisonment for any term not exceeding five years. R.S., c. 43, s. 112.

EXPLOSIVE SUBSTANCES.

111. Causing dangerous explosions.—Every one is guilty of an indictable offence and liable to imprisonment for life who wilfully causes, by any explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property is actually caused or not. 55-56 V., c. 29, s. 99.

It is not necessary to prove actual injury, and it is sufficient, if such exposure to risk or chance of injury be shewn as will satisfy the jury that actual danger to life was caused. R. v. McGrath, 14 Cox C. C., 598.

112. Attempt to destroy property with explosives.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully places or throws any explosive substance into or near any building or ship with intent to destroy or damage the same or any machinery, working tools, or chattels whatever, whether or not an explosion takes place. 55-56 V., c. 29, s. 488.

113. Doing anything with intent to cause an explosion.—Every one who wilfully,—

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion of a nature likely to endanger life, or to cause serious injury to property; or,

(b) **Making or possessing explosives.**—Makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or to cause serious injury to property, or to enable any other person by means thereof to endanger life or to cause serious injury to property;

Penalty.—Is guilty of an indictable offence and liable to fourteen years' imprisonment, whether an explosion takes place or not, and whether any injury to person or property is actually caused or not. 55-56 V., c. 29, s. 100.

If several persons are connected in a common design to have explosive substances made for an unlawful purpose, each of the confederacy is responsible in respect of such articles as are in the possession of others connected in the carrying out of their common design. R. v. Charles, 17 Cox C. C., 499.

114. Making or possessing explosives.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who makes, or knowingly has in his possession or under his control, any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or has it not in his possession or under his control, for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object. 55-56 V., c. 29, s. 101.

If a person is charged under this section before a justice, no further proceeding shall be taken against him without the consent of the Attorney General, except such proceedings as are necessary to secure his safe custody. Section 594.

OFFENSIVE WEAPONS.

115. Possession of weapon.—Every one is guilty of an indictable offence and liable to five years' imprisonment who has in his custody or possession, or carries any offensive weapon for any purpose dangerous to the public peace. 55-56 V., c. 29, s. 102.

Prosecutions under this section must be commenced within six months from the date of the commission of the offence. Section 1140.

116. Openly carrying weapons.—If two or more persons openly carry offensive weapons in a public place in such a manner and under such circumstances as are calculated to create terror and alarm, each of such persons is liable, on summary conviction before two justices, to a penalty not exceeding forty dollars and not less than ten dollars, and in default of payment to imprisonment for any term not exceeding thirty days. 55-56 V., c. 29, s. 103.

The prosecution must be commenced within one month from the commission of the offence. Section 1140.

117. Smuggler carrying weapons.—Every one is guilty of an indictable offence and liable to imprisonment for ten years who, while carrying offensive weapons, is found with any goods liable to seizure or forfeiture under any law relating to inland revenue, the customs, trade or navigation, knowing such goods to be so liable. 55-56 V., c. 29, s. 104.

118. Carrying pistol or air-gun.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars and not less than five dollars, or to imprisonment for one month who, not being a justice or a public officer, or a soldier, sailor, or volunteer in His Majesty's service, on duty, or a constable or other peace officer, and not having a certificate of exemption from the operation of this section as hereinafter provided for, and not having at the time reasonable cause to fear an assault or other injury to his person, family or property, has upon his person a pistol, or air-gun elsewhere than in his own dwelling-house, shop, warehouse, or counting-house.

2. **Certificate of exemption.**—If sufficient cause be shown upon oath to the satisfaction of any justice, he may grant to any applicant therefor not under the age of sixteen years and as to whose discretion and good character he is satisfied by evidence upon oath, a certificate of exemption from the operation of this section, for such period, not exceeding twelve months, as he deems fit.

3. **Evidence.**—Such certificate, upon the trial of any offence, shall be *prima facie* evidence of its contents and of the signature and official character of the person by whom it purports to be granted.

4. **Operation of section suspended.**—Whenever the Governor in Council deems it expedient in the public interest, he may by proclamation suspend the operation of the provisions of the first and second subsections of this section respecting certificates of exemption, or exempt from such operation any particular part of Canada, and in either case for such period, and with such exceptions as to the persons affected by this section as he deems fit. 55-56 V., c. 29, s. 105.

The prosecution must be commenced within one month. Section 1140.

119. Selling pistol or air-gun to minor.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, who sells or gives any pistol or air-gun, or any ammunition therefor, to a minor under the age of sixteen years, unless he establishes to the satisfaction of the justice before whom he is charged that he used reasonable diligence in endeavouring to ascertain the age of the minor before making such sale or gift, and that he had good reason to believe that such minor was not under the age of sixteen.

2. **Record of sale.**—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars, who sells any pistol or air-gun without keeping a record of such sale, the date thereof, and the name of the purchaser and of the maker's name, or other mark by which such arm may be identified. 55-56 V., c. 29, s. 106.

The prosecution must be commenced within one month. Section 1140.

120. Having pistol or air-gun on person when arrested. Every one who when arrested, either on a warrant issued against him for an offence or while committing an offence, has upon his person a pistol or air-gun is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding fifty dollars and not less than twenty dollars, or to imprisonment for any term not exceeding three months, with or without hard labour. 55-56 V., c. 29, s. 107.

The prosecution must be commenced within one month. Section 1140.

121. Having pistol or air-gun with intent to injure any person.—Every one who has upon his person a pistol or air-gun, with intent therewith unlawfully to do injury to any other person, is guilty of an offence and liable, on summary convic-

tion before two justices, to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for any term not exceeding six months, with or without hard labour. 55-56 V., c. 29, s. 108.

The prosecution must be commenced within one month. Sec. 1140.
A conviction for "procuring" a pistol with intent unlawfully to do injury to another person, is not to be held a sufficient conviction for "having on his person a pistol, etc." and is bad as not disclosing an offence known to the law. R. v. Mines (1894), 1 C. C. C., 217.

122. Pointing any firearm or air-gun at any person.—Every one who, without lawful excuse, points at another person any firearm or air-gun, whether loaded or unloaded, is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding one hundred dollars and not less than ten dollars, or to imprisonment for any term not exceeding thirty days, with or without hard labour. 55-56 V., c. 29, s. 109.

The prosecution must be commenced within one month. Section 1140.

123. Carrying offensive weapons.—Every one who carries about his person any bowie-knife, or any dagger, dirk, metal knuckles, skull cracker, slung shot, or other offensive weapon of a like character, or secretly carries about his person any instrument loaded at the end, or sells or exposes for sale, publicly or privately, any such weapon, or, being masked or disguised, carries, or has in his possession any firearm or air-gun, is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding fifty dollars and not less than ten dollars, and in default of payment thereof, to imprisonment for any term not exceeding thirty days, with or without hard labour. 55-56 V., c. 29, s. 110.

The prosecution must be commenced within one month. Section 1140.

124. Carrying sheath-knife in town or city.—Every one, not being thereto required by his lawful trade or calling, who is found in any town or city carrying about his person any sheath-knife is liable, on summary conviction before two justices, to a penalty not exceeding forty dollars and not less than ten dollars, and in default of payment thereof, to imprisonment for any term not exceeding thirty days, with or without hard labour. 55-56 V., c. 29, s. 111.

The prosecution must be commenced within one month. Section 1140.

125. Exception as to soldiers, etc.—It is not an offence for any soldier, public officer, peace officer, sailor or volunteer in His Majesty's service, or constable or other policeman, to carry

loaded pistols or other usual arms or offensive weapons in the discharge of his duty. 55-56 V., c. 29, s. 112.

This constitutes an exception from the operation of sections 120, 123 and 124.

126. Refusing to deliver offensive weapon.—Every one attending any public meeting or being on his way to attend the same who, upon demand made by any justice within whose jurisdiction such public meeting is appointed to be held, declines or refuses to deliver up, peaceably and quietly, to such justice, any offensive weapon with which he is armed or which he has in his possession, is guilty of an indictable offence.

2. **Procedure and penalty.**—The justice may record the refusal and adjudge the offender to pay a penalty not exceeding eight dollars, or the offender may be proceeded against by indictment, as in other cases of indictable offences. R.S., c. 152, s. 1; 55-56 V., c. 29, s. 113.

The prosecution must be commenced within one year. Section 1140.

127. Coming armed within one mile of public meeting. Every one, except the sheriff, deputy sheriff and justices for the district or county, or the mayor, justices or other peace officer for the city or town, respectively, in which any public meeting is held, and the constables and special constables employed by them, or any of them, for the preservation of the public peace at such meeting, is guilty of an indictable offence, and liable to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months, or to both, who, during any part of the day upon which such meeting is appointed to be held, comes within one mile of the place appointed for such meeting armed with any offensive weapon. 55-56 V., c. 29, s. 114.

The prosecution must be commenced within one year. Section 1140.

128. Lying in wait for persons returning therefrom.—Every one is guilty of an indictable offence and liable to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both, who lies in wait for any person returning, or expected to return from any such public meeting, with intent to commit an assault upon such person, or with intent, by abusive language, opprobrious epithets or other offensive demeanour, directed to, at or against such person to provoke such person, or those who accompany him, to a breach of the peace. 55-56 V., c. 29, s. 115.

The prosecution must be commenced within one year. Section 1140.

SEDITIOUS OFFENCES.

129. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(a) **Administering oath to commit crime.**—Administers, or is present at and consenting to the administration of, any oath or any engagement purporting to bind the person taking the same to commit any crime punishable by death or imprisonment for more than five years; or,

(b) **Inducing oath.**—Attempts to induce or compel any person to take any such oath or engagement; or,

(c) **Taking oath.**—Takes any such oath or engagement. 55-56 V., c. 29, s. 120.

130. Penalty.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who,—

(a) **Administering oaths binding to.**—Administers or is present at and consenting to the administration of any oath or engagement purporting to bind the person taking the same

(i) **Sedition.**—To engage in any mutinous or seditious purpose,

(ii) **Disturbance of peace.**—To disturb the public peace or commit or endeavour to commit any offence,

(iii) **Not to inform.**—Not to inform and give evidence against any associate, confederate or other person,

(iv) **Not to reveal illegal combination, etc.**—Not to reveal or discover any unlawful combination or confederacy, or any illegal act done or to be done, or any illegal oath or obligation or engagement which may have been administered or tendered to or taken by any person, or the import of any such oath or obligation or engagement; or,

(b) **Attempts.**—Attempts to induce or compel any person to take any such oath or engagement; or,

(c) **Taking oath.**—Takes any such oath or engagement. 55-56 V., c. 29, s. 121.

A similar enactment is contained in the Imperial Statute, 37 Geo. III, cap. 123, known as the Unlawful Oaths Act of 1797.
See R. v. Pigott, 11 Cox C. C., 44; R. v. Fussell, 3 Cox C. C., 291.
R. v. Sullivan, 11 Cox C. C., 44; R. v. Burns, 16 Cox C. C., 355.

131. Compulsion thereto no excuse unless declaration made.—Any one who, under such compulsion as would otherwise excuse him, offends against either of the last two preceding sections, shall not be excused thereby unless, within the period hereinafter mentioned, he declares the same and what he knows touching the same, and the persons by whom and in whose

presence, and when and where, such oath or obligation or engagement was administered or taken, by information on oath before a justice for the district or city or county in which such oath or engagement was administered or taken.

2. **Limitation of time for declaration.**—Such declaration may be made by such person within fourteen days after the taking of the oath, unless he is hindered from making it by actual force or sickness, in which case it may be made within eight days of the cessation of such hindrance.

3. **At Trial.**—The declaration may be made on such person's trial if it happens before the expiration of either of the periods aforesaid. 55-56 V., c. 29, s. 122.

See Grant v. Beaudry, (1881), 4 L. N., 393.

132. Seditious words.—Seditious words are words expressive of a seditious intention.

2. **Seditious libel.**—A seditious libel is a libel expressive of a seditious intention.

3. **Seditious conspiracy.**—A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention. 55-56 V., c. 29, s. 123.

133. Intentions not seditious.—No one shall be deemed to have a seditious intention only because he intends in good faith,—

(a) to show that His Majesty has been misled or mistaken in his measures; or,

(b) to point out errors or defects in the government or constitution of the United Kingdom, or of any part of it, or of Canada or any province thereof, or in either House of Parliament of the United Kingdom or of Canada, or in any legislature, or in the administration of justice; or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or,

(c) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects. 55-56 V., c. 29, s. 123.

134. Seditious words, punishment.—Every one is guilty of an indictable offence and liable to two years' imprisonment who speaks any seditious words or publishes any seditious libel or is a party to any seditious conspiracy. 55-56 V., c. 29, s. 124.

See R. v. Burns, 16 Cox C. C., 355; R. v. Lovett, 9 C. & P., 462; R. v. Burdett, 4 B & Ald., 95.

135. Libel on foreign sovereign.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful justification, publishes any libel tending to degrade, revile or expose to hatred and contempt in the estimation of the people of any foreign state, any prince or person exercising sovereign authority over such state. 55-56 V., c. 29, s. 125.

136. Spreading false news.—Every one is guilty of an indictable offence and liable to one year's imprisonment who wilfully and knowingly publishes any false news or tale whereby injury or mischief is or is likely to be occasioned to any public interest. 55-56 V., c. 29, s. 126.

See Bishop on Criminal Law, 5th ed. (1872), parag. 473.
Scott's case, 5 New Newgate Calendar 284.

PIRACY.

137. Piracy by the law of nations.—Every one is guilty of an indictable offence who does any act which amounts to piracy by the law of nations, and is liable,—

(a) **Punishment in case of violence to person.**—To the penalty of death, if in committing or attempting to commit such crime the offender murders, attempts to murder or wounds any person, or does any act by which the life of any person is likely to be endangered;

(b) **Other cases.**—To Imprisonment for life in all other cases, 55-56 V., c. 29, s. 127.

The offence of piracy at common law is nothing more than robbery upon the high seas; but by statutes passed at various times and still in force, many artificial offences have been created which are to be deemed to amount to piracy. Roscoe Cr. Evid., 11th ed. 817.
See also R. v. May, 2 East P. C., 796; R. v. Mason, 2 East P. C., 796.

138. Piratical acts.—Every one is guilty of an indictable offence and liable to imprisonment for life who, within Canada, does any of the piratical acts specified in this section, or who, having done any of such piratical acts, comes or is brought within Canada without having been tried therefor, that is to say:—

(a) **British subject—hostility or robbery or adhering to King's enemies.**—Being a British subject, on the sea, or in any place within the jurisdiction of the Admiralty of England, under colour of any commission from any foreign prince or state, whether such prince or state is at war with His Majesty

or not, or under pretense of authority from any person whomsoever commits any act of hostility or robbery against other British subjects, or during any war is in any way adherent to or gives aid to His Majesty's enemies;

(b) **Entering British ship and destroying goods.**—Whether a British subject or not, on the sea or in any place within the jurisdiction of the Admiralty of England, enters into any British ship, and throws overboard, or destroys any part of the goods belonging to such ship, or laden on board the same;

(c) **Certain acts done upon British ship.**—Being on board any British ship on the sea or in any place within the jurisdiction of the Admiralty of England,

(i) turns enemy or rebel, and piratically runs away with the ship, or any boat, ordnance, ammunition or goods,

(ii) yields up voluntarily any ship, boat, ordnance, ammunition or goods to any pirate,

(iii) brings any seducing message from any pirate, enemy or rebel,

(iv) counsels or procures any persons to yield up or run away with any ship, goods or merchandise, or to turn pirate or to go over to pirates,

(v) lays violent hands on the commander of any such ship, in order to prevent him from fighting in defence of his ship and goods,

(vi) confines the master or commander of any such ship

(vii) makes or endeavours to make a revolt in the ship; or,

(d) **British subject does certain acts.**—Being a British subject in any part of the world, or whether a British subject or not, being in any part of His Majesty's dominions or on board a British ship, knowingly

(i) **Pirate supplies.**—Furnishes any pirate with any ammunition or stores of any kind,

(ii) **Fitting out ship.**—Fits out any ship or vessel with a design to trade with or supply or correspond with any pirate,

(iii) **Assisting Pirate.**—Conspires or corresponds with any pirate. 55-56 V., c. 29, s. 128.

If full effect is given to the words "or in any place within the jurisdiction of the Admiralty of England," parag. (b.) is probably ultra vires. See section 577. See McLeod v. Attorney General of New South Wales, L. R. (1891) A. C., 455; R. v. Plowman (1894), 25 O. R., 656.

Par. (c.)—Foreigners are only amenable within the three mile limit. But as regards the Great Lakes, it has been settled that the territorial limit is not three miles from the shore, but the middle of the lake.

A person who is not a British subject can only be tried under this section in a court in Canada with the leave of the Governor General, and on his certificate that such proceedings are expedient. Section 591.

139. Piratical act with violence.—Every one is guilty of an indictable offence and liable to suffer death who, in committing or attempting to commit any piratical act, assaults with intent to murder, or wounds, any person, or does any act likely to endanger the life of any person. 55-56 V., c. 29, s. 129.

140. Not resisting pirate.—Every one is guilty of an indictable offence and liable to six months' imprisonment, and to forfeit to the owner of the ship all wages then due to him, who, being a master, officer or seaman of any merchant ship which carries guns and arms, does not, when attacked by any pirate, fight and endeavour to defend himself and his vessel from being taken by such pirate, or who discourages others from defending the ship, if by reason thereof the ship falls into the hands of such pirate. 55-56 V., c. 29, s. 130.

CONVEYING LIQUOR ON BOARD HIS MAJESTY'S SHIPS.

141. Penalty.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a fine not exceeding fifty dollars for each offence, and in default of payment to imprisonment for a term not exceeding one month, with or without hard labour, who, without the previous consent of the officer commanding the ship or vessel,—

(a) **Taking liquor on board ship.**—Conveys any intoxicating liquor on board any of His Majesty's ships or vessels; or,

(b) **Attempting to take.**—Approaches or hovers about any of His Majesty's ships or vessels for the purpose of conveying any such liquor on board thereof; or,

(c) **Delivering.**—Gives or sells to any man in His Majesty's service, on board any such ship or vessel, any intoxicating liquor. 55-56 V., c. 29, s. 119.

PART III.

RESPECTING THE PRESERVATION OF PEACE IN THE VICINITY OF PUBLIC WORKS.

INTERPRETATION.

142. Definitions.—In this Part, unless the context otherwise requires,—

(a) '**This Part.**'—Means such section or sections thereof as

are in force, by virtue of any proclamation, in the place with reference to which the Part is to be construed and applied;

(b) **Commissioner.**—Means a commissioner under this Part:

(c) '**Public work.**'—Includes any railway, canal, road, bridge or other work of any kind, and any mining operation constructed or carried on by the Government of Canada, or of any province of Canada, or by any municipal corporation, or by any incorporated company, or by private enterprise. R.S., c. 151, s. 1.

PROCLAMATION.

143. Part may be declared in force.—The Governor in Council may, as often as occasion requires, declare, by proclamation, that upon and after a day therein named, this Part, or any section or sections thereof, shall be in force in any place in Canada in such proclamation designated, within the limits or in the vicinity whereof any public work is in course of construction, or in any place in the vicinity of any public work, within which he deems it necessary that this Part, or any section or sections thereof, should be in force; and this Part, or any such section or sections thereof, shall, upon and after the day named in such proclamation, take effect within the place or places designated therein.

2. **Declared no longer in force.**—The Governor in Council may, in like manner, from time to time, declare this Part, or any section or sections thereof, to be no longer in force in any such place, and may again, from time to time, declare this Part, or any section or sections thereof, to be in force therein.

3. **No effect in city.**—No such proclamation shall have effect within the limits of any city.

4. **Judicial notice.**—All courts, magistrates and justices shall take judical notice of every such proclamation. R.S., c. 151, s. 2.

WEAPONS.

144. Delivery of arms to commissioner.—On or before the day named in such proclamation, every person employed on or about the public work to which the same relates, shall bring and deliver up, to some commissioner or officer appointed for the purposes of this Part, every weapon in his possession, and shall obtain from such commissioner or officer a receipt for the same. R.S., c. 151, s. 3.

145. Seizure of arms not delivered.—Every weapon found in the possession of any person employed, as aforesaid, after the

day named in any proclamation and within the limits designated in such proclamation, may be seized by any justice, commissioner, constable or other peace officer, and shall be forfeited to the use of His Majesty. R.S., c. 151, s. 4.

146. Possessing weapons near public works.—Every one employed upon or about any public work, within any place in which this Part is in force, who, upon or after the day named in such proclamation, keeps or has in his possession or under his care or control within any such place, any weapon, is liable on summary conviction to a penalty not exceeding four dollars and not less than two dollars for every such weapon found in his possession or under his care or control. R.S., c. 151, s. 5; 55-56 V., c. 29, s. 117.

147. Receiving or concealing arms with intent.—Every one who, for the purpose of defeating the enforcement of this Part, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed, within any place in which this Part is in force, any weapon belonging to or in the custody of any person employed on or about any public work, is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than forty dollars; and a moiety of such penalty shall belong to the informer and the other moiety to His Majesty, for the public uses of Canada. R.S., c. 151, s. 6; 55-56 V., c. 29, s. 117.

148. Employees carrying weapons.—Every person employed on any public work found carrying any weapon, within any place in which this Part is at the time in force, for purposes dangerous to the public peace, is guilty of an indictable offence. R.S., c. 151, s. 7.

149. Return of weapons when Part ceases to be in force.—Whenever this Part ceases to be in force within the place where any weapon has been delivered and detained in pursuance thereof, or whenever the owner or person lawfully entitled to any such weapon satisfies the commissioner that he is about to remove immediately from the limits within which this Part is at the time in force the commissioner may deliver up to the owner or person authorized to receive the same, any such weapon, on production of the receipt given for it. R.S., c. 151, s. 11.

INTOXICATING LIQUOR.

150. Sale of liquor prohibited.—Upon and after the day named in such proclamation and during such period as the proclamation remains in force, no person shall, at any place within the limits specified in the proclamation, sell, barter or, directly or indirectly, for any matter, thing, profit or reward, exchange, supply or dispose of, or shall give to any person any intoxicating liquor, or shall expose, keep or have in his possession any intoxicating liquor intended to be dealt with in any such way.

2. **As to retail only.**—The provisions of this section shall not extend to any person selling intoxicating liquor by whole sale, and not retailing it, if the said person is a licensed distiller or brewer, nor shall they apply where liquor is supplied for *bona fide*, medicinal purposes upon the prescription of a duly qualified medical practitioner. R.S., c. 151, s. 13; 55-56 V., c. 29, s. 118.

151. Penalty for contravention.—Every one who, by himself, his clerk, servant, agent or other person, violates any of the provisions of the last preceding section, is guilty of an offence against this Part, and liable on summary conviction to a penalty of fifty dollars and costs, and, in default of payment, to imprisonment for a term not exceeding three months; and, upon any subsequent conviction, to a penalty of one hundred dollars and costs, ment or to further imprisonment for a term not exceeding three both, and, in default of payment of such penalty, to imprisonwithout hard labour. 55-56 V., c. 29, s. 118.

152. Agent liable to same penalties as principal.—Every clerk, servant, agent or other person who, being in the employment of, or on the premises of another person, violates or assists in violating any of the said provisions for the person in whose employment or on whose premises he is, shall be equally guilty with such person, and shall be liable to the punishment mentioned in the last preceding section. R.S., c. 151, s. 15; 55-56 V., c. 29, s. 118.

153. Consideration given for purchase may be recovered.—Any payment or compensation, whether in money or securities for money, labour or property of any kind, for intoxicating liquor sold, bartered, exchanged, supplied or disposed of, contrary to the provisions aforesaid, shall be held to have been criminally received without consideration, and against law, equity and good conscience, and the amount or value thereof may be recovered from the receiver by the person making, paying or furnishing such payment or compensation. R.S., c. 151, s. 18.

154. Transfer for liquor void.—All sales, transfers, conveyances, liens and securities of every kind, which either in whole or in part have been made or given for or on account of intoxicating liquor sold, bartered, exchanged, supplied or disposed of contrary to such provisions, shall be void against all persons, and no right shall be acquired thereby.

2. **No action on account of sale of liquor.**—No action of any kind shall be maintained, either in whole or in part, for or on account of intoxicating liquor sold, bartered, exchanged, supplied or disposed of, contrary to the said provisions. R.S., c. 151, s. 18.

PART IV.

OFFENCES AGAINST THE ADMINISTRATION OF LAW AND JUSTICE.

INTERPRETATION.

155. Definitions.—In this Part, unless the context otherwise requires,—

(a) '**The government.**'—Includes the government of Canada, and the government of any province of Canada, as well as His Majesty in the right of Canada or of any province thereof, and the Commissioners of the Transcontinental Railway;

(b) '**Official or employee of the government.**'—Official or person in the employment of the government and official or employee of the government, extend to and include the Commissioners of the Transcontinental Railway and the persons holding office as such commissioners, and the engineers, officials, officers, employees and servants of the said commissioners;

(c) '**Office.**'—Includes every office in the gift of the Crown or of any officer appointed by the Crown, and all commissions, civil, naval and military, and all places or employments in any public department or office whatever, and all deputations to any such office and every participation in the profits of any office or deputation. 55-56 V., c. 29, ss. 133 and 137; 6 E. VII., c. 7, s. 1.

CORRUPTION AND DISOBEDIENCE.

156. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(a) **Judicial, etc., officer accepting or obtaining office for consideration.**—Holding any judicial office, or being a mem-

ber of Parliament or of a legislature, corruptly accepts or obtains, or agrees to accept, or attempts to obtain for himself or any other person, any money or valuable consideration, office, place, or employment on account of anything already done or omitted, or to be afterwards done or omitted, by him in his judical capacity, or in his capacity as such member; or,

(b) **Giving or offering bribe.**—Corruptly gives or offers to any such person or to any other person, any such bribe as aforesaid on account of any such act or omission. 55-56 V., c. 29, s. 131.

Prosecutions under this section can only be taken with the leave of the Attorney General of Canada. Section 593.

157. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(a) **Officer taking bribe.**—Being a justice, peace officer, or public officer, employed in any capacity for the prosecution or detection or punishment of offenders, corruptly accepts or obtains, or agrees to accept or attempts to obtain for himself, or for any other person, any money or valuable consideration, office, place or employment, with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any crime, or to protect from detection or punishment any person having committed or intending to commit any crime; or,

(b) **Offering bribe to officer.**—Corruptly gives or offers to any officer aforesaid any such bribe as aforesaid with any such intent. 55-56 V., c. 29, s. 132.

See definition of peace officer in section 2, (s.s. 26) and of "public officer" in section 2 (s.s. 29).

158. Frauds upon the government.—Penalty —Every one is guilty of an indictable offence and liable to a fine of not less than one hundred dollars, and not exceeding one thousand dollars, and to imprisonment for a term not exceeding one year and not less than one month, and in default of payment of such fine to imprisonment for a further time not exceeding six months who,—

(a) **Making offer or gift to unduly influence officer.**—Makes any offer, proposal, gift, loan or promise, or gives or offers any compensation or consideration, directly or indirectly, to any official or person in the employment of the government, or to any member of his family, or to any person under his control or for his benefit, with intent to obtain the assistance or influence of such official or person to promote either the procuring of any contract with the government for the performance of any work, the doing of any thing, or the furnishing of any goods,

effects, food or materials, the execution of any such contract, or the payment of the price or consideration stipulated therein, or any part thereof, or of any aid or subsidy payable in respect thereof; or,

(b) **Accepting such offer or gift.**—Being an official or person in the employment of the government directly or indirectly, accepts or agrees to accept, or allows to be accepted by any person under his control or for his benefit, any such offer, proposal, gift, loan, promise, compensation or consideration; or,

(c) **Procuring withdrawal of tenders.**—In the case of tenders being called for by or on behalf of the government for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, directly or indirectly, by himself, or by the agency of any other person on his behalf, with intent to obtain the contract therefor, either for himself or for any other person, offers to make, or makes, any gift, loan, offer or promise, or offers or gives any consideration or compensation whatsoever to any person tendering for such work or other service, or to any member of his family or other person for his benefit, to induce such person to withdraw his tender for such work or other service, or to compensate or reward him for having withdrawn such tender; or,

(d) **Accepting gift, etc., as consideration for withdrawing tender.**—In case of tendering for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food, or materials, for the government when tenders are called for by or on behalf of the government, accepts or receives, directly or indirectly, or permits, or allows to be accepted or received by any member of his family, or by any other person under his control, or for his benefit, any such gift, loan, offer, promise, consideration or compensation, as a consideration or reward for withdrawing or for having withdrawn such tender; or,

(e) **Officer accepting or person making any gift concerning government business.**—Being an official or employee of the government, receives, directly or indirectly, whether personally or by or through any member of his family or person under his control or for his benefit, any gift, loan, promise, compensation or consideration whatsoever, either in money or otherwise, from any person whomsoever, for assisting or favouring any individual in the transaction of any business whatsoever with the government, or who gives or offers any such gift, loan, promise, compensation or consideration; or,

(f) **Compensation for procuring settlement of claim.**—By reason of, or under the pretense of, possessing influence with

the government, or with any minister or official thereof, demands, exacts or receives from any person, any compensation, fee or reward, for procuring from the government the payment of any claim, or of any portion thereof, or for procuring or furthering the appointment of himself, or of any other person, to any office, place or employment, or for procuring or furthering the obtaining for himself or any other person, of any grant, lease or other benefit from the government; or offers, promises or pays to such person, under the circumstances and for the causes aforesaid, or any of them, any such compensation, fee or reward; or,

(g) **Giving reward or commission to officer.**—Having dealings of any kind with the government through any department thereof, pays to any employee or official of the government, or to any member of the family of such employee or official, or to any person under his control or for his benefit, any commission or reward; or within one year before or after such dealings, without the express permission in writing of the head of the department with which such dealings have been had, the proof of which permission shall lie upon him, makes any gift, loan, or promise of any money, matter or thing, to any such employee or other person aforesaid; or,

(h) **Acceptance.**—Being an employee or official of the government, demands, exacts or receives from such person, directly or indirectly, by himself, or by or through any other person for his benefit, or permits or allows any member of his family, or any person under his control, to accept or receive

(i) **Commission.**—Any such commission or reward, or

(ii) **Gift within a year.**—Within the said period of one year, without the express permission in writing of the head of the department with which such dealings have been had, the proof of which permission shall lie upon him, accepts or receives any such gift, loan or promise; or,

(i) **Contractor subscribing, etc., to election fund of candidate.**—Having any contract with the government for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, and having or expecting to have any claim or demand against the government by reason of such contract, directly or indirectly, by himself or by any person on his behalf, subscribes, furnishes or gives, or promises to subscribe, furnish or give, any money or other valuable consideration for the purpose of promoting the election of any candidate, or of any number, class or party of candidates, to a legislature or to Parliament, or with the intent in any way of influencing or affecting the result of a provincial or Dominion election.

2. **Penalty if value exceeds $1,000.**—If the value of the amount or thing paid, offered, given, loaned, promised, received or subscribed, as the case may be, exceeds one thousand dollars, the offender under this section is liable to any fine not exceeding such value. 55-56 V., c. 29, s. 133; 56 V., c. 32, s. 1.

Misbehaviour in public office was an indictable offence at common law. R. v. Arnoldi (1893), 23 O. R., 201.

Prosecutions under this section must be commenced within two years from the date of the commission of the offence. Section 1140.

159. Other consequences.—Every person convicted of an offence under the last preceding section shall be incapable of contracting with the Government, or of holding any contract or office with, from or under it, or of receiving any benefit under any such contract. 55-56 V., c. 29, s. 134.

160. Breach of trust by public officer.—Every public officer is guilty of an indictable offence and liable to five years' imprisonment who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person. 55-56 V., c. 29, s. 135.

See R. v. Benjamin (1853), U. C. C. P., 179.

161. Municipal corruption.—Penalty.—Every one is guilty of an indictable offence and liable to a fine not exceeding one thousand dollars and not less than one hundred dollars, and to imprisonment for a term not exceeding two years and not less than one month, and in default of payment of such fine to imprisonment for a further term not exceeding six months, who directly or indirectly,—

(a) **Corruptly offering gift to municipal councillor to vote or abstain from voting.**—Makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member of a municipal council, whether the same is to enure to his own advantage or to the advantage of any other person, for the purpose of inducing such member either to vote or to abstain from voting at any meeting of the council of which he is a member or at any meeting of a committee of such council, in favour of or against any measure, motion, resolution or question submitted to such council or committee; or,

(b) **Corruptly offering gift to secure aid of municipal officers.**—Makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member or to any officer of a muni-

cipal council for the purpose of inducing him to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or,

(c) **Other corrupt proposals to officers.**—Makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any officer of a municipal council for the purpose of inducing him to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act; or,

(d) **Members of council corruptly accepting gift.**—Being a member or officer of a municipal council, accepts or consents to accept any such offer, proposal, gift, loan, promise, agreement, compensation or consideration in this section mentioned; or in consideration thereof votes or abstains from voting in favour of or against any measure, motion, resolution or question, or performs or abstains from performing any official act; or,

(e) **Use of threats or fraud to influence vote.**—Attempts by any threat, deceit, suppression of the truth or other unlawful means to influence any member of a municipal council in giving or withholding his vote in favour of or against any measure, motion, resolution or question, or in not attending any meeting of the municipal council of which he is a member, or of any committee thereof; or,

(f) **Threats or fraud to secure or prevent vote or official act.**—Attempts by any such means as in the last preceding paragraph mentioned to influence any member or any officer of a municipal council to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person, or to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act. 55-56 V., c. 29, s. 136.

Prosecutions under this section must be commenced within two years from the date of the commission of the offence. Section 1140.

162. Offence.—Every one is guilty of an indictable offence who, directly or indirectly,—

(a) **Selling office.**—Sells or agrees to sell any appointment to or resignation of any office, or any consent to any such appointment or resignation, or receives, or agrees to receive, any reward or profit from the sale thereof; or,

(b) **Purchasing office.**—Purchases or gives any reward or profit for the purchase of any such appointment, resignation or consent, or agrees or promises to do so;

Forfeiture.—And in addition to any other penalty incurred, forfeits any right which he may have in the office and is disabled for life from holding the same. 55-56 V., c. 29, s. 137.

No specific punishment being provided for an offence under this section, it falls within section 1052, which provides that "every person convicted of any indictable offence for which no punishment is specially provided, shall be liable to imprisonment for five years."

163. Offence.—Every one is guilty of an indictable offence who, directly or indirectly,—

(a) **Receiving reward for corrupt municipal act.**—Receives or agrees to receive any reward or profit for any interest, request or negotiation about any office, or under pretense of using any such interest, making any such request or being concerned in any such negotiation; or,

(b) **Giving or procuring any reward.**—Gives or procures to be given any profit or reward, or makes or procures to be made any agreement for the giving of any profit or reward, for any such interest, request or negotiation as aforesaid; or,

(c) **Being a party to negotiations.**—Solicits, recommends or negotiates in any manner as to any appointment to or resignation of any office in expectation of any reward or profit; or,

(d) **Keeping office for the purpose.**—Keeps any office or place for transacting or negotiating any business relating to vacancies in, or the sale or purchase of, or appointment to or resignation of offices. 55-56 V., c. 29, s. 137.

See note to preceding section.

164. Disobeying a statute.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any legislature in Canada by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law. 55-56 V., c. 29, s. 138.

This section does not apply where a magistrate, having received an information and having heard the allegation of the informant, comes to the conclusion that what is charged does not constitute an offence. Re E. J. Parke (1899), 3 C. C. C., 122. See also R. v. Paynter, (1857), 7 E. & B., 327; R. v. Dayman (1857), 7 E. & B., 672; Ex parte Lewis (1888), C. R., 21 Q. B. D., 191.

165. Disobeying orders of court.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any lawful order, other than for the payment of money, made by any court of justice, or by any person or body of persons authorized by any statute to make or

give such order, unless some penalty is imposed, or other mode of proceeding is expressly provided, by law. 55-56 V., c. 29, s. 139.

Contempt of court is a criminal offence, and, therefore, nothing will be inferred in aid of a charge of that offence; it must be fully proved. In re Scaife (1896), 5 B. C. R., 153.

166. Misconduct of officers entrusted with execution of writs.—Every one is guilty of an indictable offence and liable to a fine and imprisonment who, being a sheriff, deputy-sheriff, coroner, elisor, bailiff, constable or other officer entrusted with the execution of any writ, warrant or process, wilfully misconducts himself in the execution of the same, or wilfully, and without the consent of the person in whose favour the writ, warrant or process was issued, makes any false return, thereto. 55-56 V., c. 29, s. 143.

A person convicted under section is liable to five years' imprisonment (section 1052); or to a fine of such amount as the court in its discretion may deem fit (section 1029).
At common law, see 1 Russell Cr. 6th ed. 416.

PEACE OFFICERS.

167. Neglect to aid peace officers in arresting offenders.—Every one is guilty of an indictable offence and liable to six months imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy-sheriff, mayor or other head officer, justice, magistrate, or peace officer, in the execution of his duty in arresting any person, or in preserving the peace, without reasonable excuse omits to do so. 55-56 V., c. 29, s. 142.

R. v. Sherlock, (1866), 10 Cox C. C., 170.

168. Obstructing public officer.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who resists or wilfully obstructs any public officer in the execution of his duty or any person acting in aid of such officer. 55-56 V., c. 29, s. 144.

169. Obstructing peace officer.—Every one who resists or wilfully obstructs,—

(a) any peace officer in the execution of his duty or any person acting in aid of such officer;

(b) **Person executing process.**—Any person in the lawful execution of any process against any lands or goods or in making any lawful distress or seizure;

is guilty of an offence punishable on indictment or on summary conviction and liable if convicted on indictment to two years' imprisonment, and, on summary conviction before two justices, to six months' imprisonment with hard labour, or to a fine of one hundred dollars. 55-56 V., c. 29, s. 144.

The accused can be tried summarily by a police magistrate under the summary convictions clauses of the Code, or he can be tried before a magistrate as for an indictable offence. R. v. Nelson (1901), 8 B. C. R., 112 and 4 C. C. C., 461. R. v. Crossen (1899), 3 C. C. C., 153 disapproved.

See also R. v. Monkman (1892), 13 C. L. T., 16.

Where the process of an inferior court is void by reason of its containing a direction to a peace officer to seize certain goods at a place outside of the territorial jurisdiction of the court, such process is insufficient upon which to base a conviction for resisting the officer in its execution. R. v. Finlay, 4 C. C. C., 539.

See also R. v. Carmichael and McDonald, 7 C. C. C., 167.

It is necessary for the prosecution to prove that rent was due and in arrear before a conviction can be made under Code sec. 144 (now sec. 169) for the offence of wilfully obstructing a lawful distress. R. v. Harron (1903), 7 C. C. C., 543.

The re-taking of possession by the vendor under a contract for the conditional sale of chattels is not within the term "lawful distress or seizure," as used in Code sec. 144 (now sec. 169), and an obstruction of the vendor's bailiff in regaining possession is not an offence under that section. R. v. Shand (1904), 8 C. C. C., 45.

See R. v. Cook, 11 C. C. C., 32.

MISLEADING JUSTICE.

170. Definition of perjury.—Perjury is an assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court, or by affidavit or otherwise, and whether such evidence is material or not, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury or person holding the proceeding.

2. **Subornation.**—Subornation of perjury is counselling or procuring a person to commit any perjury which is actually committed.

3. **Evidence.**—Evidence in this section includes evidence given on the *voir dire* and evidence given before a grand jury. 55-56 V., c. 29, s. 145.

There can be no conviction under this section upon the evidence of one witness, "unless such witness is corroborated in some material particular by evidence implicating the accused." Section 1002.

According to the law as defined in this section, a witness will only be committing perjury if he knows the statement he makes to be false. Neither the materiality of the statement, nor its admissibility as evidence are important, nor practically, is the jurisdiction of the Court.

For leading cases on this subject decided before the Code came into force, see R. v. Aylett (1785), 1 T. R., 63; R. v. Hughes (1844), 1 Car. & K., 519; R. v. Townshend (1866), 10 Cox C. C., 356.

The accused was charged with having committed perjury at the inquest before one of Her Majesty's Coroners. The inquest was held before a coroner and a jury. Upon a reserved question, the Court held that the count of the charge above quoted should not have been withdrawn from the jury, nor should they have been instructed to acquit the prisoner, because the inquest was held before a coroner and jury, and not before a coroner, as charged; the circumstances of the alleged offence being sufficiently set forth to satisfy the Statute. R. v. Thompson (1896), 32 C. L. J., 493. See also R. v. Drew (1902 and 1903), 6 C. C. C., 241 and 424; R. v. Cohon (1903), 6 C. C. C., 386; Re-Collins (1905), 10 C. C. C., 73; R. v. Drummond (1905), 10 C. C. C., 340; R. v. Quinn (1905), 10 C. C. C., 412; R. v. Thickens (1906), 11 C. C. C., 274; R. v. Carvery (1906), 11 C. C. C., 331; R. v. Doyle (1906), 12 C. C. C., 69; R. v. Moraes (1907), 12 C. C. C., 145.

A person charged with perjury committed in a civil action is entitled to have put in evidence those parts of his testimony in the civil action, which may explain or qualify the statements in respect of which the perjury is charged. The refusal to admit such testimony is a "substantial wrong" under Code sec. 746 (now sec. 1019). R. v. Coote (1903), 8 C. C. C., 199.

171. Witness defined.—Every person is a witness within the meaning of the last preceding section who actually gives his evidence, whether he was competent to be a witness or not, and whether his evidence was admissible or not.

2. **Judicial proceeding.**—Every proceeding is judicial within the meaning of the last preceding section which is held in or under the authority of any court of justice, or before a grand jury, or before either the Senate or House of Commons of Canada, or any committee of either the Senate or House of Commons, or before any legislative council, legislative assembly or house of assembly or any committee thereof, empowered by law to administer an oath, or before any justice, or any arbitrator or umpire, or any person or body of persons authorized by law or by any statute in force for the time being to make an inquiry and take evidence therein upon oath, or before any legal tribunal by which any legal right or liability can be established, or before any person acting as a court, justice or tribunal, having power to hold such judicial proceeding, whether duly constituted or not, and whether the proceeding was duly instituted or not before such court or person so as to authorize it or him to hold the proceeding, and although such proceeding was held in a wrong place or was otherwise invalid. 55-56 V., c. 29, s. 145.

172. Perjury.—Every one is guilty of perjury who,—

(a) **False statement under oath within Canada.**—Having taken or made any oath, affirmation, solemn declaration or affidavit where, by any Act or law in force in Canada, or in any

province of Canada, it is required or permitted that facts, matters or things be verified, or otherwise assured or ascertained by or upon the oath, affirmation, declaration or affidavit of any person, wilfully and corruptly, upon such oath, affirmation, declaration or affidavit, deposes, swears to or makes any false statement as to any such fact, matter or thing; or,

(b) **False oath, etc., in verification of statement.**—Knowingly, wilfully and corruptly, upon oath, affirmation or solemn declaration, affirms, declares or deposes to the truth of any statement for so verifying, assuring or ascertaining any such fact, matter or thing, or purporting so to do, or knowingly, wilfully and corruptly takes, makes, signs or subscribes any such affirmation, declaration or affidavit as to any such fact, matter or thing, if such statement, affidavit, affirmation or declaration is untrue in whole or in part. 55-56 V., c. 29, s. 148.

Any one who falsely swears before a deputy returning officer at a federal election that he is a certain person, is guilty of perjury even though he is not an elector. R. v. Chamberlain (1894), 10 Man. L. R., 261; R. v. Proud (1867), L. R., 1 C. C., 71; R. v. Holland (1894), 30 G. L. J., 428; R. v. Lawrence (1878), 43 U. C. R., Q. B., 164; R. v. Gibson (1896), 29 N. S. R., 88.

173. Making false affidavit out of the province but within Canada.—Every person who wilfully and corruptly makes any false affidavit, affirmation or solemn declaration, out of the province in which it is to be used but within Canada, before any person authorized to take the same, for the purpose of being used in any province of Canada, is guilty of perjury in like manner as if such false affidavit, affirmation or declaration were made before a competent authority in the province in which it is used or intended to be used. 55-56 V., c. 29, s. 149.

174. Penalty for perjury or subornation.—Every one is guilty of an indictable offence and liable to fourteen years imprisonment who commits perjury or subornation of perjury.

2. **Increased in certain cases.**—If the crime is committed in order to procure the conviction of a person for any crime punishable by death, or imprisonment for seven years or more, the punishment may be imprisonment for life. 55-56 V., c. 29, s. 146.

Procuring by false evidence the conviction and death of any one is not homicide. Section 253.

175. False oaths in extra-judicial proceedings.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being required or authorized by law to make any statement on oath, affirmation or solemn declaration, there-

upon makes a statement which would amount to perjury if made in a judicial proceeding. 55-56 V., c. 29, s. 147.

On a charge under Code sec. 147 (now sec. 175), of making a false statutory declaration, it is not necessary to allege in the indictment that the false statement was made with intent to mislead. R. v. Skelton (1898), 4 C. C. C., 467.

176. False statements in extra-judicial proceedings.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, upon any occasion on which he is permitted by law to make any statement or declaration before any officer authorized by law to permit it to be made before him, or before any notary public to be certified by him as such notary, makes a statement which would amount to perjury if made on oath in a judicial proceeding. 55-56 V., c. 29, s. 150.

177. Fabricating evidence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to mislead any court of justice or person holding any such judicial proceeding, fabricates evidence by any means other than perjury or subornation of perjury. 55-56 V., c. 29, s. 151.

The offence is complete if the evidence is fabricated with intent to mislead a judicial tribunal even if the evidence is not used. R. v. Vreones (1891), 17 Cox C. C., 267.

178. Conspiring to bring false accusations.—Every one is guilty of an indictable offence who conspires to prosecute any person for any alleged offence, knowing such person to be innocent thereof, and shall be liable,—

(a) **Penalty.**—To imprisonment for fourteen years if such person might, upon conviction for the alleged offence, be sentenced to death or imprisonment for life;

(b) **Penalty.**—To imprisonment for ten years if such person might, upon conviction for the alleged offence, be sentenced to imprisonment for any term less than life. 55-56 V., c. 29, s. 152.

179. Administering oaths without authority.—Every justice or other person who administers, or causes or allows to be administered, or receives, or causes or allows to be received, any oath or affirmation touching any matter or thing whereof such justice or other person has not jurisdiction or cognizance by some law in force at the time being, or not authorized or required by any such law, is guilty of an indictable offence and liable to a fine not exceeding fifty dollars, or to imprisonment for any term not exceeding three months.

2. **Saving.**—Nothing in this section contained shall be con-

strued to extend to any oath or affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of any offence, or to any oath or affirmation required or authorized by any law of Canada, or by any law of the province wherein such oath or affirmation is received or administered, or is to be used, or to any oath or affirmation, which is required or authorized by the laws of any foreign country to give validity to an instrument in writing or to evidence designed or intended to be used in such foreign country. 55-56 V., c. 29, s. 153.

180. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(a) **Corrupting witness.**—Dissuades or attempts to dissuade any person by threats, bribes or other corrupt means from giving evidence in any cause or matter, civil or criminal; or

(b) **Corrupting juryman.**—Influences or attempts to influence, by threats or bribes or other corrupt means, any juryman in his conduct as such, whether such person has been sworn as a juryman or not; or,

(c) **Accepting bribes.**—Accepts any bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as a juryman; or,

(d) **Otherwise obstructing justice.**—Wilfully attempts in any other way to obstruct, pervert or defeat the course of justice. 55-56 V., c. 29, s. 154.

The offence defined in sub. sec. (h) is the old common law offence of embracery. R. v. Cornellier, 29 L. C. J., 69.

It is essential that there should be a judicial proceeding pending at the time of the alleged offence. R. v. Leblanc, 8 Montreal L. N., 114.

An indictment or charge that the accused paid money to a person not to attend a court of revision in connection with an election, does not disclose a "perversion or defeat of justice" under Code sec. 180 (d), where it does not shew any ground for supposing that the non-attendance would defeat justice, and where the person receiving the money was the person whose right to vote was in question, and might therefore abandon his claim. The offence disclosed may properly be charged under sub sec. (a) of Code sec. 180, as an attempt to dissuade a person by a bribe from giving evidence. R. v. Lake (1906), 11 C. C. C., 37.

See also R. v. Holland, 14 C. L. T., 294.

181. Compounding penal actions.— Every one is guilty of an indictable offence and liable to a fine not exceeding the penalty compounded for who, having brought, or under colour of bringing, an action against any person under any penal statute in order to obtain from him any penalty, compounds the said action without order or consent of the court, whether any

offence has in fact been committed or not. 55-56 V., c. 29, s. 155.

The offence of compounding is complete when the agreement not to prosecute is made whether it be performed or not. R. v. Burgess, 16 Q. B. D., 141.

An indictment will lie, if the offence compounded is of such a public nature that its predominating feature is that the public must be protected against it, as distinguished from misdemeanours essentially in the nature of private injuries. State v. Carver, 39 Atl. Rep., 973 (N.H.)

The offence of misprision of felony is now in desuetude. It consisted in concealing or procuring the concealment of a felony known to have been committed. Archbold Cr. Plead. (1900), 1238; 1 Hawkins, cap., 59.

182. Corruptly taking reward without bringing offender to trial.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who corruptly takes any money or reward, directly or indirectly, under pretense or upon account of helping any person to recover any chattel, money, valuable security or other property which, by any indictable offence, has been stolen, taken, obtained, extorted, converted or disposed of, unless he has used all due diligence to cause the offender to be brought to trial for the same. 55-56 V., c. 29, s. 156.

It is not necessary to show that the accused had any connection with the commission of the previous offence; it is sufficient if the evidence satisfies the jury that the prisoner had some corrupt and improper design when he received the money, and did not bona fide intend to use such means as he could for the detection and punishment of the offender. R. v. King, 1 Cox C. C., 36.

See also R. v. Burgess (1885), 16 Q. B. D., 141; R. v. Crisp (1818), 1 B. & Ald., 282; R. v. Best (1840), 9 C. & P., 368; R. v. Stone (1830), 4 C. & P., 379; Kerr v. Leeman (1844), 6 Q. B., 308; Windhill Local Board of Health v. Vint (1890), 45 C. D., 351.

183. Penalty.—Every one is liable to a penalty of two hundred and fifty dollars for each offence, recoverable with costs by any person who sues for the same in any court of competent jurisdiction, who,—

(a) **Advertising reward and immunity for offender.**—Publicly advertises a reward for the return of any property which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked; or,

(b) **Making use of words in advertisement to like effect.**—Makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any inquiry after the person producing such property; or,

(c) **Advertising that money advanced on property stolen will be paid.**—Promises or offers in any such public advertise-

ment to return to any pawnbroker or other person who advanced money by way of loan on, or has bought, any property stolen or lost, the money so advanced or paid, or any other sum of money for the return of such property; or,

(d) **Printing advertisement.**—Prints or publishes any such advertisement. 55-56 V., c. 29. s. 157.

Prosecutions under sub sec. (d) must be commenced within six months from the date of the commission of the offence. Section 1140.

184. False declaration in respect to execution of judgment of death.—Every one is guilty of an indictable offence and liable to two years imprisonment, who knowingly and wilfully signs a false certificate or declaration, when a certificate or declaration is required, with respect to the execution of judgment of death on any prisoner. 55-56 V., c. 29, s. 158.

ESCAPES AND RESCUES.

185. Being at large while under sentence of imprisonment.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, having been sentenced to imprisonment, is afterwards, and before the expiration of the term for which he was sentenced, at large within Canada without some lawful cause, the proof whereof shall lie on him. 55-56 V., c. 29, s. 159.

See R. v. Finney, 2 C. & K., 274; R. v. Johnson, 4 C. C. C., 178.

186. Penalty.—Every one is guilty of an indictable offence and liable to five years' imprisonment who knowingly and wilfully,—

(a) **Assisting prisoner of war to escape.**—Assists any alien enemy of His Majesty, being a prisoner of war in Canada, to escape from any place in which he may be detained; or,

(b) **Assisting while at large on parole.**—Assists any such prisoner as aforesaid, suffered to be at large on his parole in Canada or in any part thereof, to escape from the place where he is at large on his parole. 55-56 V., c. 29, s. 160.

187. Prison breach.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, by force or violence, breaks any prison with intent to set at liberty himself or any person confined therein on any criminal charge. 55-56 V., c. 29, s. 161.

An actual breaking of the prison with force, and not merely a constructive breaking, must be proved. If a gaoler sets open the prison doors and the prisoner escapes, the latter is not guilty of prison breach. 1 Hale, P. C., 611.

See also Roscoe Crim. Evid. 11th ed., 837.

188. Attempt to break prison.—Every one is guilty of an indictable offence and liable to two years' imprisonment who attempts to break prison, or who forcibly breaks out of his cell or makes any breach therein with intent to escape therefrom. 55-56 V., c. 29, s. 162.

"Force," is the gist of the offence specified in this section. R. v. Haswell (1821), R. & R., 458.

189. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(a) **Escapes after conviction.**—Having been convicted of any offence, escapes from any lawful custody in which he may be under such conviction; or,

(b) **Escaping from prison.**—Whether convicted or not, escapes from any prison in which he is lawfully confined on any criminal charge. 55-56 V., c. 29, s. 163.

See Stephen, Digest of Crim. Law, art. 199; 1 Hale P. C., 489.

190. Escape from custody.—Every one is guilty of an indictable offence and liable to two years' imprisonment who being in lawful custody other than as aforesaid on any criminal charge, escapes from such custody. 55-56 V., c. 29, s. 164.

191. Penalty.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who,—

(a) **Rescue of person sentenced to death or for life.**—Rescues any person or assists any person in escaping, or attempting to escape, from lawful custody, whether in prison or not, under sentence of death or imprisonment for life, or after conviction of, and before sentence for, or while in such custody upon a charge of any crime punishable with death or imprisonment for life; or,

(b) **Officer permitting escape.**—Being a peace officer and having any such person in his lawful custody, or being an officer of any prison in which any such person is lawfully confined, voluntarily and intentionally permits him to escape therefrom. 55-56 V., c. 29, s. 165.

Rescue is the deliverance of a prisoner from lawful custody by a third person. 2 Bishop, Crim. Law, 893.

The rescuer, where the prisoner concurs in the rescue, is an aider at the fact, and therefore a principal in the prisoner's offence of prison breach. 1 Bishop, Crim. Law, 456.

192. Penalty.—Every one is guilty of an indictable offence and liable to five years' imprisonment who,—

(a) **Rescuing or assisting to escape in other cases.**—Rescues any person, or assists any person in escaping, or attempting to escape, from lawful custody, whether in prison or not, under a sentence of imprisonment for any term less than life, or after conviction of, and before sentence for, or while in such custody upon a charge of any crime punishable with imprisonment for a term less than life; or,

(b) **Officer permitting escape in other cases.**—Being a peace officer having any such person in his lawful custody, or being an officer of any prison in which such person is lawfully confined, voluntarily and intentionally permits him to escape therefrom. 55-56 V., c. 29, s. 166.

193. Escape by failure to perform legal duty.—Every one is guilty of an indictable offence and liable to one year's imprisonment, who, by failing to perform any legal duty, permits a person in his lawful custody on a criminal charge to escape therefrom. 63-64 V., c. 46, s. 3.

See 2 Bishop, Crim. Law, 920; 1 Hale, 601.

194. Escape by conveying things into prison.—Every one is guilty of an indictable offence and liable to two years' imprisonment who with intent to facilitate the escape of any prisoner lawfully imprisoned conveys, or causes to be conveyed, any thing into any prison. 55-56 V., c. 29, s. 167.

195. Causing discharge of prisoner under pretended authority.—Every one is guilty of an indictable offence and liable to two years' imprisonment who knowingly and unlawfully, under colour of any pretended authority, directs or procures the discharge of any prisoner not entitled to be so discharged, and the person so discharged shall be held to have escaped. 55-56 V., c. 29, s. 168.

196. Full term to be served when retaken.—Every one who escapes from custody shall, on being retaken, serve, in the prison to which he was sentenced, a term equivalent to the remainder of his term unexpired at the time of his escape, in addition to the punishment which is awarded for such escape.

2. **Place of additional imprisonment.**—Any imprisonment so awarded may be to the penitentiary or prison from which the escape was made. 55-56 V., c. 29, s. 169.

PART V.

OFFENCES AGAINST RELIGION, MORALS AND PUBLIC CONVENIENCE.

INTERPRETATION.

197. Definitions.—In this Part, unless the context otherwise requires,—

(a) '**Theatre.**'—Includes any place open to the public, gratuitously or otherwise, where dramatic, musical, acrobatic or other entertainments or representations are presented or given;

(b) '**Guardian.**'—Includes any person who has in law or in fact the custody or control of any girl or child referred to;

(c) '**Public place.**'—Includes any open place to which the public have or are permitted to have access and any place of public resort. 57-58 V., c. 57, s. 1; 63-64 V., c. 46, s. 3; 3 E. VII., c. 13, s. 2.

OFFENCES AGAINST RELIGION.

198. Blasphemous libels.—Every one is guilty of an indictable offence and liable to one year's imprisonment who publishes any blasphemous libel.

2. **Question of fact—Proviso—Expression of opinion.**—Whether any particular published matter is a blasphemous libel or not is a question of fact: Provided that no one is guilty of a blasphemous libel for expressing in good faith and in decent language, or attempting to establish by arguments used in good faith and conveyed in decent language, any opinion whatever upon any religious subject. 55-56 V., c. 29, s. 170.

For blasphemy, see 2 Bishop, Crim. Law, 69, 74.

Publications, which in an indecent and malicious spirit assail and asperse the truth of Christianity or of the Scriptures in language calculated and intended to shock the feelings and outrage the belief of mankind are punishable as blasphemous libels. R. v. Bradlaugh, 15 Cox C. C., 217; R. v. Pelletier (1900), 6 R. L., 'N. S.), 116.

But if the decencies of controversy are observed even the fundamentals of religion may be attacked without the writer being guilty of blasphemous libel. R. v. Ramsay & Foote, 15 Cox C. C., 231, 238.

Section 910 as to plea of justification applies only to defamatory libels, not to blasphemous libels.

199. Obstructing officiating clergyman.—Every one is guilty of an indictable offence and liable to two years' imprison-

ment who, by threats or force, unlawfully obstructs or prevents, or endeavours to obstruct or prevent, any clergyman or other minister in or from celebrating divine service, or otherwise officiating in any church, chapel, meeting-house, school-house or other place for divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place. 55-56 V., c. 29, s. 171.

The offence of unlawfully obstructing divine service under Code sec. 171 (now sec. 199), is not made out where the clergyman obstructed had no legal claim to the possession of, or use of the church premises, and was in point of law himself a trespasser thereon. R. v. Wasyl Kapij (1905), 9 C. C. C., 186.

200. Violence to officiating clergyman.—Every one is guilty of an indictable offence and liable to two years' imprisonment who strikes of offers any violence to, or arrests upon any civil process or under the pretense of executing any civil process, any clergyman or other minister who is engaged in or, to the knowledge of the offender, is about to engage in, any of the rites or duties in the last preceding section mentioned, or who, to the knowledge of the offender, is going to perform the same, or returning from the performance thereof. 55-56 V., c. 29, s. 172.

201. Disturbing meetings for religious worship or special purposes.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars and costs, and in default of payment to one month's imprisonment, who wilfully disturbs, interrupts or disquiets any assemblage of persons met for religious worship, or for any moral, social or benevolent purpose, by profane discourse, by rude or indecent behaviour or by making a noise, either within the place of such meeting or so near it as to disturb the order or solemnity of the meeting. 55-56 V., c. 29, s. 173.

R. v. Wasyl Kapij (1905) 9 C. C. C., 186.

Disturbance of a congregation legally assembled for divine service is an indictable offence at common law. 1 Hawkins, cap. 28, sec. 23.

This section does not apply to a meeting of electors called by one of the candidates during a municipal election. R. v. Lavoie (1902), 6 C. C. C., 39.

As to disturbance of a Salvation Army meeting, see R. v. Gauthier (1905), 11 C. C. C., 263.

OFFENCES AGAINST MORALITY.

202. Buggery.—Every one is guilty of an indictable offence and liable to imprisonment for life who commits buggery, either with a human being or with any other living creature. 55-56 V., c. 29, s. 174.

Buggery, also called sodomy, is the carnal copulation against nature by human beings with each other or with a beast. There must be a penetration per annum. 1 Bishop Crim. Law, 380; Archbold Cr. Plead. (1900), 879.

A penetration of the mouth is not sodomy, but it is an offence under section 206. See R. v. Jacobs, R. & R., 331.

Unlike rape, sodomy may be committed between two persons both of whom consent and even by husband and wife. R. v. Jellyman, 8 C. & P., 604; R. v. Allen (1848), 1 Denison C. C., 364.

Although a person under fourteen years of age cannot be convicted of sodomy he may, if the act be committed against the will of the other person, be punished for an indecent assault under sec. 293.

R. v. Hartlen (1898), 2 C. C. C., 12.

As to exclusion of public from the court room, see section 645.

203. Attempt to commit.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who attempts to commit the offence mentioned in the last preceding section. 55-56 V., c. 29, s. 175.

Public may be excluded from court room, section 645.

204. Incest.—Every parent and child, every brother and sister, and every grandparent and grandchild, who cohabit or have sexual intercourse with each other, shall each of them, if aware of their consanguinity, be deemed to have committed incest, and be guilty of an indictable offence and liable to fourteen years' imprisonment, and the male person shall also be liable to be whipped: Provided that, if the court or judge is of opinion that the female accused is a party to such intercourse only by reason of the restraint, fear or duress of the other party, the court or judge shall not be bound to impose any punishment on such person under this section. 55-56 V., c. 29, s. 176.

Incest was not an offence punishable at common law, but was dealt with by the English ecclesiastical courts, which had power to imprison for the offence. Stephen's Digest of Crim. Law, art. 170.

Oral evidence is not admissible to prove relationship on a charge of incest in the Province of Quebec, and the relationship must be established by the production of extracts from the registers of civil status, as required by the provincial laws of evidence made applicable to criminal proceedings by the Canada Evidence Act, 35, unless the absence of such registers is proved. R. v. Garneau (1899), 4 C. C. C., 69.

As to excluding public from court-room, see section 645.

205. Indecent acts.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a fine of fifty dollars or to six months' imprisonment with or without hard labour, or to both fine and imprisonment, who wilfully,—

(a) **In Public places.**—In the presence of one or more persons does any indecent act in any place to which the public have or are permitted to have access; or,

(b) **As an insult.**—Does any indecent act in any place in-

tending thereby to insult or offend any person. 53 V., c. 37, s. 6; 55-56 V., c. 29, s. 177.

A place out of sight of the public footway, where people had no legal right to go, but did habitually go without interference, is included. R. v. Wellard, L. R., 14 Q. B. D., 63.

A summary conviction for "unlawfully" committing an act does not sufficiently charge that the act was 'wilfully' done to constitute an offence under a statute which makes the latter an essential element of the offence. Ex parte O'Shaughnessy (1904), 8 C. C. C., 136; R. v. Tupper (1906), 11 C. C. C., 199; R. v. Barre (1905), 11 C. C. C., 1.

A person is guilty of indecent acts within the meaning of section 177 (now sec. 205) of the Criminal Code, who, in a public theatre, in the presence of several persons, make indecent gestures on his person or otherwise, while singing an obscene song. R. v. Jourdan (1900), 8 C. C. C., 337.

The public may be excluded from the court-room, section 645.

206. Acts of gross indecency.—Every male person is guilty of an indictable offence and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person. 55-56 V., c. 29, s. 178.

See R. v. Jones (1896), 18 Cox C. C., 207.

Exclusion of the public from the court-room, section 645.

207. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse,—

(a) **Obscene or immoral books or pictures.**—Manufactures, or sells, or exposes for sale or to public view, or distributes or circulates, or causes to be distributed or circulated, any obscene book, or other printed, typewritten or otherwise written matter, or any picture, photograph, model or other object tending to corrupt morals; or,

(b) **Indecent show.**—Publicly exhibits any disgusting object or any indecent show; or,

(c) **Drugs for abortion.**—Offers to sell, advertises, publishes an advertisement of, or has for sale or disposal, any medicine, drug, or article intended or represented as a means of preventing conception or of causing abortion or miscarriage.

2. **Excess.**—No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done, and that there was no excess in the acts alleged beyond what the public good required.

3. **Questions for judge.**—It shall be a question for the court or judge whether the occasion of the manufacture, sale, exposing for sale, publishing, or exhibition is such as might be

for the public good, and whether there is evidence of excess beyond what the public good required in the manner, extent or circumstances in, to or under which the manufacture, sale, exposing for sale, publishing or exhibition is made; but it shall be a question for the jury whether there is or is not such excess.

4. **Motives.**—The motives of the manufacturer, seller, exposer, publisher or exhibitor shall in all cases be irrelevant. 63-64 V., c. 46, s. 3.

Section 861 provides that no count for selling or exhibiting an obscene book, pamphlet, newspaper or other printed or written matter, shall be deemed insufficient on the ground that it does not set out the words thereof.

As to test of obscenity, see R. v. Hicklin, L. R., 3 Q. B., 371: R. v. Beaver (1905), 9 C. C. C., 415.

Ordinary ballet-dancing in the customary costume does not constitute an immoral or indecent play or performance within the meaning of Code sec. 179a (now sec. 207), The word "indecent" has no fixed legal meaning, and it devolves upon the prosecution in a charge of presenting an indecent theatrical performance to affirmatively prove that the performance in question was of a depraving tendency. R. v. McAuliffe (1904), 8 C. C. C., 21.

A provincial legislature has jurisdiction to legislate concerning matters of police regulation of public morals, but in so far as the same subject is dealt with by the Dominion Parliament, the Dominion legislation will prevail. The power of enacting such police regulations may be delegated by the provincial legislature to municipal councils. Ex parte Ashley (1898), 8 C. C. C., 328.

See also R. v. Karn (1903), 6 C. C. C., reversing R. v. Karn, 5 C. C. C., 543.

208. Immoral theatrical performance.—Penalty for lessee or manager.—Every person who, being the lessee, agent or person in charge or manager of a theatre, presents or gives or allows to be presented or given therein any immoral, indecent or obscene play, opera, concert, acrobatic, variety, or vaudeville performance, or other entertainment or representation, is guilty of an offence punishable on indictment or on summary conviction, and liable, if convicted upon indictment, to one year's imprisonment with or without hard labour, or to a fine of five hundred dollars, or to both, and, on summary conviction, to six months' imprisonment, or to a fine of fifty dollars, or to both.

2. **Person appearing as actor.**—Every person who takes part or appears as an actor, performer, or assistant in any capacity, in any such immoral, indecent or obscene play, opera, concert, performance, or other entertainment or representation, is guilty of an offence and liable, on summary conviction, to three months' imprisonment, or to a fine not exceeding twenty dollars, or to both.

3. **Person in an indecent costume.**—Every person who so takes part or appears in an indecent costume is guilty of an

offence and liable, on summary conviction, to six months' imprisonment, or to a fine of fifty dollars, or to both. 3 E. VII., c. 13, s. 2.

See R. v. Jourdan (1900), 8 C. C. C., 337 and Ex parte Ashley (1898), 8 C. C. C., 328.

209. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who posts for transmission or delivery by or through the post,—

(a) **Posting obscene publications.**—Any obscene or immoral book, pamphlet, newspaper, picture, print, engraving, lithograph, photograph or any publication, matter or thing of an indecent, immoral, or scurrilous character; or,

(b) **Letters or post-cards.**—Any letter upon the outside or envelope of which, or any post card or post band or wrapper upon which, there are words, devices, matters or things of the character aforesaid; or,

(c) **Letters to deceive and defraud.**—Any letter or circular concerning schemes devised or intended to deceive and defraud the public, or for the purpose of obtaining money under false pretenses. 63-64 V., c. 46, s. 3.

210. Burden of proof.—The burden of proof of previous unchastity on the part of the girl or woman under the three next succeeding sections shall be upon the accused. 63-64 V., c. 46, s. 3.

211. Seduction of girls between fourteen and sixteen.—Every one is guilty of an indictable offence and liable to two years' imprisonment who seduces or has illicit connection with any girl of previously chaste character, of or above the age of fourteen years and under the age of sixteen years. 55-56 V., c. 29, s. 181; 56 V., c. 32, s. 1.

Prosecutions under this section must be commenced within one year from the date of the commission of the offence. Sec. 1140.

By section 1002 "no person accused of an offence under sections 211 to 220 shall be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused."

See as to corroborative evidence, R. v. Burr (1906), 12 C. C. C., 103.

The corroborative evidence necessary under this section may consist of the admission of the accused made after the girl has attained the age of sixteen years to the effect that he has had connection with her before that time. And a statement made by the accused before he was charged with the offence, that he had been advised that if he could get the girl to marry him he would escape punishment, is corroborative evidence implicating the accused, and proper to be considered by a jury or by a judge exercising the functions of a jury. R. v. Wyse (1895) 1 C. C. C., 6.

Evidence of a girl's pregnancy, and of her having been employed in

domestic service at the residence of the accused and of facts shewing merely a strong probability of there having been no opportunity for any other man to have connection with her, does not constitute corroborative evidence implicating the accused. R. v. Vahey (1899), 2 C. C. C., 258.

A certificate of the registration of birth, coupled with evidence of identity, is legal evidence of the age of the person mentioned in it. R. v. Weaver, L. R., 2 C. C. R., 85.

Proof of the date of birth may be given by some one who was present at the birth. R. v. Nicholls, 10 Cox C. C., 476.

The evidence of the girl as to her own age would not be admissible. R. v. Rishworth, 2 Q. B., 476.

The public may be excluded from the court-room, sec. 645.

212. Seduction under promise of marriage.—Every one, above the age of twenty-one years, is guilty of an indictable offence and liable to two years' imprisonment who, under promise of marriage, seduces and has illicit connection with any unmarried female of previously chaste character and under twenty-one years of age. 55-56 V., c. 29, s. 182.

By section 214 (s.s. 2), the subsequent marriage of the seducer and the seduced, is, if pleaded, a good defence to any indictment for any offence against sections 212, 213 and 214, except in the case of a guardian seducing his ward.

The prosecutions under this section must be commenced within one year from the date of the commission of the offence, sec. 1140.

There is misdirection when the judge tells the jury that if the seduction took place while there was an existing engagement to marry, this section applies, for the seduction contemplated by this section is one which is accomplished by means of a promise to marry. R. v. Walker (1893), 1 N. W. T., S. C. R., 84 and 5 C. C. C., 465.

See also R. v. Lougheed (1903), 8 C. C. C., 184.

The corroboration need not be as to every fact in issue and it is sufficient if it confirms the belief that the prosecutrix is speaking the truth. R. v. Daun (1906), 11 C. C. C., 244.

"Chaste character" does not mean reputation for chastity, but actual personal virtue. Kenyon v. People, 26 N. Y. 203, 207.

The girl must be actually chaste and pure in conduct and principle, up to the time of the commission of the offence. Carpenter v. People, 8 Barb., 603, 608.

As to exclusion of public from court-room, see section 645.

213. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment,—

(a) **Seducing ward.**—Who, being a guardian, seduces or has illicit connection with his ward; or,

(b) **Seducing female employee.**—Who seduces or has illicit connection with any woman or girl previously chaste and under the age of twenty-one years who is in his employment in a factory, mill, work-shop, shop or store, or who, being in a common, but not necessarily similar, employment with him in such factory, mill, workshop, shop or store, is, in respect of her employment or work in such factory, mill, workshop, shop or

store, under or in any way subject to his control or direction, or receives her wages or salary directly or indirectly from him. 63-64 V., c. 46, s. 3.

The prosecution must be commenced within one year from the date of the offence. Section 1140.
As to exclusion of public from court-room, see section 645.
See sec. 214 (s.s. 2) as to seduction of ward by guardian.

214. Seducing female passengers on vessels.—Every one is guilty of an indictable offence and liable to a fine of four hundred dollars or to one year's imprisonment, who, being the master or other officer or a seaman or other person employed on board of any vessel, while such vessel is in any water within the jurisdiction of the Parliament of Canada, under promise of marriage, or by threats, or by the exercise of his authority, or by solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger.

2. **Marriage a defence.**—The subsequent intermarriage of the seducer and the seduced is, if pleaded, a good defence to any indictment for any offence against this or either of the two last preceding sections, except in the case of a guardian seducing his ward. 55-56 V., c. 29, s. 184.

The public may be excluded from the court-room, sec. 645.

215. Parent or guardian procuring or party to defilement of girl or woman.—Every one who, being the parent or guardian of any girl or woman,—

(a) procures such girl or woman to have carnal connection with any man other than the procurer; or

(b) orders, is party to, permits or knowingly receives the avails of, the defilement, seduction or prostitution of such girl or woman;

Penalty.—Is guilty of an indictable offence, and liable to fourteen years' imprisonment, if such girl or woman is under the age of fourteen years, and if such girl or woman is of or above the age of fourteen years, to five years' imprisonment. 55-56 V., c. 29, s. 186.

Prosecutions must be commenced within one year from the date of the commission of the offence. Sec. 1140.
The public may be excluded from the court-room, sec. 645.

216. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment with hard labour, who,—

(a) **Procuring girl for defilement.**—Procures, or attempts to procure, any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral charac-

ter, to have unlawful carnal connection, either within or without Canada, with any other person or persons; or,

(b) **Enticing girl to house of ill-fame.**—Inveigles or entices any such woman or girl to a house of ill-fame or assignation for the purpose of illicit intercourse or prositution, or knowingly conceals in such house any such woman or girl so inveigled or enticed; or,

(c) **Procuring girl for prostitution.**—Procures, or attempts to procure, any woman or girl to become, either within or without Canada, a common prostitute; or,

(d) **To leave Canada for the purpose.**—Procures, or attempts to procure, any woman or girl to leave Canada with intent that she may become an inmate of a brothel elsewhere; or,

(e) **To come in to Canada for the purpose.**—Procures any woman or girl to come to Canada from abroad with intent that she may become in inmate of a brothel in Canada; or,

(f) **To leave her abode for the purpose.**—Procures, or attempts to procure, any woman or girl to leave her usual place of abode in Canada, such place not being a brothel, with intent that she may become an inmate of a brothel, within or without Canada; or,

(g) **Carnal connection by threats.**—By threats or intimidation procures, or attempts to procure, any woman or girl to have any unlawful carnal connection, either within or without Canada; or,

(h) **By false pretenses.**—By false pretenses or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either within or without Canada; or,

(i) **Administering drugs for the purpose.**—Applies, administers to, or causes to be taken by any woman or girl any drug, intoxicating liquor, matter, or thing with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl. 55-56 V., c. 29, s. 185.

The prosecution must be commenced within one year from the commission of the offence. Section 1140.

A conviction for "unlawfully procuring or attempting to procure" a girl to become a prostitute, is void for duplicity and for uncertainty. R. v. Gibson (1898), 2 C. C. C., 302.

Upon a charge of procuring a girl to come to Canada from abroad with intent that she may become an inmate of a brothel in Canada, the acts of inducement must be shewn to have been committed in Canada to give jurisdiction to a Canadian court, unless the accused is a British subject. Re Gertie Johnson (1904), 8 C. C. C., 243.

The public may be excluded from the court-room, sec. 645.

Reg. Webster 16 QBD 134 (Mother + daughter)
Reg v Kam 20 OLR 91 (Two men + two girls)
Rex v Kam Ping 22 OLR 613 (Owner cannot be convicted for defiling

217. Householder permitting defilement.—Every one who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control thereof, induces or knowingly suffers any girl under the age of eighteen years to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man, or generally, is guilty of an indictable offence, and is liable,—

(a) **Penalty age.**—To ten years' imprisonment if such girl is under the age of fourteen years;

(b) **Penalty age.**—To two years' imprisonment if such girl is of or above the age of fourteen years. 63-64 V., c. 46, s. 3.

Corroborative S. 1002

Prosecution for this offence must be commenced within one year from the commission of the offence. Sec. 1140.

On a charge of allowing a girl under 18 to be upon premises for immoral purposes, the evidence of the girl proving that she shared with the proprietor the money she obtained by prostitution there carried on, is sufficiently corroborated under Code sec. 684 (now sec. 1002), by the evidence of another witness tending to shew that the place was a bawdy house. R. v. Brindley (1903), 6 C. C. C., 196.

The public may be excluded from the court-room, sec. 645.

218. Conspiracy to defile.—Every one is guilty of an indictable offence and liable to two year's imprisonment who conspires with any other person by false pretenses, or false representations or other fraudulent means to induce any woman to commit adultery or fornication. 55-56 V., c. 29, s. 188.

Corroborative evidence is required by sec. 1002.

The public may be excluded from the court-room, sec. 645.

219. Carnally knowing idiots.—Every one is guilty of an indictable offence and liable to four years' imprisonment who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any female idiot or imbecile, insane or deaf and dumb woman or girl, under circumstances which do not amount to rape but where the offender knew or had good reason to believe, at the time of the offence, that the woman or girl was an idiot, or imbecile, or insane or deaf and dumb. 63-64 V., c. 46, s. 3.

Corroborative evidence is required by sec. 1002.

The public may be excluded from the court-room, sec. 645.

220. Penalty.—Every one is guilty of an indictable offence and liable to a penalty not exceeding one hundred dollars and not less than ten dollars, or six months' imprisonment,—

(a) **Keeping habitation for prostitution of Indian women.**—Who, being the keeper of any house, tent or wigwam, allows or suffers any unenfranchised Indian woman to be or remain in such house, tent or wigwam, knowing or having probable

cause for believing that such Indian woman is in or remains in such house, tent or wigwam with the intention of prostituting herself therein; or,

(b) **Prostitution therein.**—Who, being an Indian woman, prostitutes herself therein; or,

(c) **Frequenting the same.**—Who, being an unenfranchised Indian woman, keeps, frequents or is found in a disorderly house, tent or wigwam used for any such purpose.

2. **Who deemed keeper.**—Every person who appears, acts or behaves as master or mistress, or as the person who has the care or management, of any house, tent or wigwam in which any such Indian woman is or remains for the purpose of prostituting herself therein, is deemed to be the keeper thereof, notwithstanding he or she is not in fact the real keeper thereof. 55-56 V., c. 29, s. 190.

Corroborative evidence is required by sec. 1002.
The public may be excluded from the court-room, sec. 645.

NUISANCES.

221. Common nuisance defined.—A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects. 55-56 V., c. 29, s. 191

The injury or annoyance must be to the whole community in general to constitute a common nuisance, and whether or not the number of persons affected is sufficient to make it a common nuisance, is a question for the jury. R. v. White, 1 Burr, 337.

The carrying on of an offensive trade is indictable where it is destructive of the health of the neighbourhood or renders the houses untenantable. R. v. Davey, 5 Esp. 217.

The omission of an electric railway company operating their cars upon a highway to use reasonable precautions so as to avoid endangering the lives of the public using the highway in common with the company, is a breach of legal duty constituting a common nuisance under the Criminal Code, secs. 191 and 213 (now secs. 221 and 247), for which an indictment will lie. R. v. Toronto Railway Company (1900), 4 C. C. C., 4.

See also R. v. Toronto Railway Co. (1905), 10 C. C. C., 106.

If the nuisance is alleged in the indictment to be still continuing the judgment may direct that the defendant shall remove it at his own cost. 1 Hawkins, cap. 75, sec. 14.

222. Criminal common nuisances.—Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual. 55-56 V., c. 29, s. 192

Although a corporation cannot be guilty of manslaughter, it may be indicted, under Code sec. 252 (now sec. 284), for having caused grievous bodily injury by omitting to maintain in a safe condition a bridge or structure which it was its duty to so maintain, and this notwithstanding that death ensued at once to the person sustaining the grievous bodily injury. R. v. Union Colliery Co. (1900), 3 C. C. C., 523, affirmed by the Supreme Court, 31 S. C. R., and 4 C. C. C., 400.

An indictment for a nuisance in obstructing a public highway is insufficient to charge a criminal offence under Code sec. 192 (now sec. 222) if it does not allege injury to the person of some one; and personal injury is not to be inferred from a count which states "actual" injury to a person named. R. v. Reynolds (1906), 11 C. C. C., 312.

See also R. v. Grand Trunk Ry. Co. (1858), 17 U. C. Q. B., 165.

223. Non criminal common nuisances.—Any one convicted upon any indictment or information for any common nuisance other than those mentioned in the last preceding section, shall not be deemed to have committed a criminal offence; but all such proceedings or judgments may be taken and had as heretofore to abate or remedy the mischief done by such nuisance to the public right. 55-56 V., c. 29, s. 193.

R. v. Cooper (1876), 40 U. C. Q. B., 294; R. v. Betts, 16 Q. B., 1022.

Where a county council is liable to repair a bridge, the proper remedy is indictment, not mandamus. Re Jamieson & County of Lanark (1876), 38 U. C. Q. B., 647.

In Ontario, it has been held that a prosecution of a municipal corporation for a nuisance in not keeping a public street in repair must be by indictment, but no preliminary enquiry can be held. R. v. City of London (1900), 37 C. L. J., 74.

See also R. v. Yates, 6 C. C. C., 282; R. v. Watson, 6 C. C. C., 331; R. v. Portage La Prairie, 10 C. C. C., 125.

224. Knowingly selling unfit food.—Every one is guilty of an indictable offence and liable to one year's imprisonment who knowingly and wilfully exposes for sale, or has in his possession with intent to sell, for human food articles which he knows to be unfit for human food.

2. **Fenalty for subsequent offence.**—Every one who is convicted of this offence after a previous conviction for the same crime shall be liable to two years' imprisonment. 55-56 V., c. 29, s. 194.

This is an offence at common law. R. v. Dixon (1814), 3 M. & Sel. 11.

If death ensues from eating such food, the seller knowing that it is dangerous is indictable for manslaughter. R. v. Stevenson (1861), 3 F. & F., 106.

It is not competent for magistrates where an information charges an offence under this section which they have no jurisdiction to try summarily, to convert the charge into one under a municipal by-law which they have jurisdiction to try summarily, and to so try it on the original information. R. v. Dungey (1901), 5 C. C. C., 38.

225. Common bawdy-house defined.—A common bawdy-house is a house, room, set of rooms or place of any kind kept

for purposes of prostitution, or occupied or resorted to by one or more persons for such purposes. 55-56 V., c. 29, s. 195.

The keeping of a bawdy-house is a nuisance at common law. 1 Russell on Crimes, 5th ed. 427.

Sections 238 and 239 of the Code declare that a keeper of a bawdy-house is a vagrant and may be punished on summary conviction.

It is immaterial whether indecent or disorderly conduct is or is not perceptible from the outside. Stephen's Crim. Law, 122.

A "brothel" is a place where people of opposite sexes are allowed to resort for illicit intercourse. A house occupied by one woman for the purpose of prostituting herself therein with a number of different men, but not allowing other women to use the premises for a like purpose is not a brothel. Singleton v. Ellison (1895), 1 Q. B., 607; R. v. Osberg (1905), 9 C. C. C., 180.

But the use of a single room by a lodger in a house in like manner to a bawdy-house has been held to constitute the keeping of a bawdy-house. R. v. Pierson (1705). 2 Ld. Raym, 1197.

Se also R. v. Young, 6 C. C. C., 42 and R. v. Mannix (1905), 10 C. C. C., 150.

226. Common gaming-house defined.—A common gaming-house is,—

(a) a house, room or place kept by any person for gain, to which persons resort for the purpose of playing at any game of chance, or at any mixed game of chance and skill; or,

(b) a house, room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which

(i) a bank is kept by one or more of the players exclusively of the others; or,

(ii) any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the game is managed, or against whom the other players stake, play or bet.

2. **Effect of part of game only being played there or stake elsewhere.**—Any such house, room or place shall be a common gaming-house, although part only of such game is played there and any other part thereof is played at some other place, either in Canada or elsewhere, and although the stake played for, or any money, valuables, or property depending on such game, is in some other place, either in Canada or elsewhere. 55-56 V., c. 29, s. 196; 58-59 V., c. 40, s. 1.

A lottery is a game of chance; and a house is a common gaming house, although part of the game is played therein, and any other part of the game is played at some other place. R. v. France (1897), 3 R. de J., 268; R. J. Q., 7 Q. B., 83.

Code sec. 773 (f) stating that any person charged before a magistrate "with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill fame or bawdy-house," may be summarily tried, does

not apply to a common gaming-house. The meaning of the words "disorderly house," in sec. 773 (f) and sec. 774 is governed by the rule noscitur a sociis, and is therefore restricted to houses of the nature and kind of a house of ill fame or bawdy-house. It is immaterial whether a generic term precedes or follows the specific terms which are used; in either case the general word must take its meaning, and be presumed to embrace only things or persons of the kind designated in the specific word. R. v. France (1898), R. J. Q., 7 Q. B., 83 and 1 C. C. C., 321.

If the "rake off" be for the benefit of the proprietor, a conviction will be maintained. R. v. Brady (1896), 10 Que. S. C., 539.

The game of "black jack" is a game of chance, and a place kept or used for playing it, although not kept for gain, is a common gaming house. R. v. Petrie (1900), 3 C. C. C., 439.

That a house is "common" does not necessarily mean that it is open to everyone; it may be of limited access. R. v. Laird (1894), 3 R. de J. (Que.), 389.

The use of a gaming instrument to decide the winning of stakes laid in another country and payable there, is not, taken alone, gaming which will render the person operating the instrument liable under this section. R. v. Wettman (1894), 1 C. C. C., 287.

See Jenks v. Turpin, (1884), L. R., 13 Q. B. D., 505.

See R. v. James (1903), 7 C. C. C., 196, overruling R. v. Saunders (1900), 3 C. C. C., 495.

R. v. Fortier (1903), 7 C. C. C., 417; R. v. Mah Kee (1905), 9 C. C. C., 47.

Even if a provincial legislature has authority to authorize municipalities to pass by-laws "for suppressing gambling houses," a municipal by-law assuming to prohibit a person from allowing a game of cards to be played for money in his house is invalid as being in excess of the power delegated. R. v. Spegelman (1905), 9 C. C. C., 169.

The proprietor of a place in which the game known as "darts" is carried on under conditions which make the chances of the proprietor much more favourable than that of the customers is properly convicted of keeping a gaming house under Code secs. 226 and 228. R. v. Cashen (1906), 11 C. C. C., 183.

227. Common betting-house defined.—A common betting-house is a house, office, room or other place,—

(a) opened, kept or used for the purpose of betting between persons resorting thereto and

(i) the owner, occupier or keeper thereof,

(ii) any person using the same,

(iii) any person procured or employed by, or acting for or on behalf of any such person,

(iv) any person having the care or management, or in any manner conducting the business thereof; or,

(b) opened, kept or used for the purpose of any money or valuable thing being received by or on behalf of any such person as aforesaid, as or for the consideration

(i) for any assurance or undertaking, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race or other race, fight, game or sport, or

(ii) for securing the paying or giving by some other per-

son of any money or valuable thing on any such event or contingency; or,

(c) opened, or kept for the purpose of recording or registering bets upon any contingency or event, horse race or other race, fight, game or sport, or for the purpose of receiving money or other things of value to be transmitted for the purpose of being wagered upon any such contingency or event, horse race or other race, fight, game or sport, whether any such bet is recorded or registered there, or any money or other thing of value is there received to be so transmitted or not; or,

(d) opened, kept or used for the purpose of facilitating or encouraging or assisting in the making of bets upon any contingency or event, horse race or other race, fight, game or sport, by announcing the betting upon, or announcing or displaying the results of, horse races or other races, fights, games or sports, or in any other manner, whether such contingency or event, horse race or other race, fight, game or sport occurs or takes place in Canada or elsewhere. 55-56 V., c. 29, s 197; 58-59 V., c. 40, s. 1.

See R. v. Giles (1895), 15 C. L. T., 178; R. v. Osborne, 27 O. R., 185.

The publication in a newspaper of an advertisement soliciting bets to be placed upon horse races and also of the results from day to day of said races is illegal; and the newspaper proprietor is liable under Code sec. 197 (d) (now sec. 227 d), for the indictable offence of using the newspaper office for the purpose of facilitating the making of bets upon a horse race, and keeping a common betting-house within the statutory definition of that offence. R. v. Smallpiece (1904), 7 C. C. C., 556.

See also R. v. Hendrie (1905), 10 C. C. C., 298.

See R. v. Saunders (1906), 12 C. C. C., 33 and (1907), 12 C. C. C., 174.

R. v. Naylette 15 O.L.R. 348

228 Disorderly house.—Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any disorderly house, that is to say, any common bawdy-house, common gaming-house or common betting-house, as hereinbefore defined.

2. **Who deemed keeper.**—Any one who appears, acts or behaves as master or mistress, or as the person having the care, government or management, of any disorderly house, shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof. 55-56 V., c. 29, s. 198.

Sec. 641 provides for places suspected of being gaming-houses, etc., being searched.

Secs. 985 and 986 state what is *prima facie* evidence of a place being a common gaming-house.

The owner of a house who leases it to another person, knowing and assenting when the lease was made to the purpose of the latter to maintain it as a common bawdy-house, thereby does an act for the purpose of aiding the lessee to commit the indictable offence of keeping a disor-

derly house, and he may himself be indicted and convicted as a principal offender. R. v. Roy (1900), 3 C. C. C., 472.

See also cases cited under secs. 226 and 227, and see R. v. Bougie (1899), 3 C. C. C., 487.

See R. v. Shepherd (1902), 6 C. C. C., 463; R. v. Clark (1904), 9 C. C. C., 125; R. v. Russell (1906), 11 C. C. C., 180.

229. Playing or looking on in gaming-house.—Every one who plays or looks on while any other person is playing in a common gaming-house is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding one hundred dollars and not less than twenty dollars, and in default of payment to two months' imprisonment. 55-56 V., c. 29, s 199.

A notice of appeal purporting to be from a conviction for "looking on" while another person was playing in a common gaming-house is not a good notice of appeal from a conviction for "playing" in a common gaming-house. R. v. Ah Yin (1902), 6 C. C. C., 63.

230. Penalty.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding one hundred dollars, and to six months' imprisonment with or without hard labour who,—

(a) **Preventing officer entering.**—Wilfully prevents any constable or other officer duly authorized to enter any disorderly house, from entering the same or any part thereof; or,

(b)) **Obstructing.**—Obstructs or delays any such constable or officer in so entering; or,

(c) **Securing door.**—By any bolt, chain or other contrivance secures any external or internal door of, or means of access to, any common gaming-house so authorized to be entered; or,

(d) **Means to prevent.**—Uses any means or contrivance whatsoever for the purpose of preventing, obstructing or delaying the entry of any constable or officer, authorized as aforesaid, into any such disorderly house or any part thereof. 55-56 V., c. 29, s. 200.

231. Gaming in stocks or merchandise.—Every one is guilty of an indictable offence and liable to five years' imprisonment, and to a fine of five hundred dollars, who, with the intent to make gain or profit by the rise or fall in price of any stock of any incorporated or unincorporated company or undertaking, either in Canada or elsewhere, or of any goods, wares or merchandise,—

(a) **Making contract without intention of acquiring or selling.**—Without the *bona fide* intention of acquiring any such shares, goods wares or merchandise, or of selling the same, as the case may be, makes or signs, or authorizes to be made or

signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any shares of stock, goods, wares or merchandise; or,

(b) **Contract without delivery or intention of receiving delivery.**—Makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise in respect of which no delivery of the thing sold or purchased is made or received, and without the *bona fide* intention to make or receive such delivery.

2. **Saving.**—It is not an offence under this section if the broker of the purchaser receives delivery, on his behalf, of the articles sold, notwithstanding that such broker retains or pledges the same as security for the advance of the purchase money or any part thereof. 55-56 V., c. 29, s. 201.

Sec. 987 provides that when a person is charged with the commission of an offence under this section, the onus is upon him of proving his *bona fide* intention.

A broker, who merely acts as such for two parties, one a buyer and the other a seller, without having any pecuniary interest in the transaction beyond his fixed commission, and without any guilty knowledge on his part of the intention of the contracting parties to gamble in stocks or merchandise, is not liable to prosecution under section 201 (now sec. 231) of the Criminal Code, nor as accessory under sec. 61 (now sec. 69). R. v. Dowd (1899), 4 C. C. C., 170.

See also R. v. Harkness (1904), 10 C. C. C., 193 and 199.

232. Place of such business is common gaming-house.—Every office or place of business wherein is carried on the business of making or signing, or procuring to be made or signed, or negotiating or bargaining for the making or signing of contracts of sale or purchase prohibited by the last preceding section is a common gaming-house, and every one who as principal or agent occupies, uses, manages or maintains the same is the keeper of a common gaming-house. 55-56 V., c. 29, s. 201.

233. Frequenting places where gaming in stocks carried on.—Every one is guilty of an indictable offence and liable to one year's imprisonment who habitually frequents any office or place wherein the making or signing or procuring to be made or signed, or the negotiating or bargaining for the making or signing, of such prohibited contracts of sale or purchase is carried on. 55-56 V., c. 29, s. 202.

234. Penalty.—Every one is guilty of an indictable offence and liable to one year's imprisonment who,—

(a) **Obtaining money, etc., by gambling in public conveyances.**—In any railway car or steamboat, used as a public

conveyance for passengers, by means of any game of cards, dice or other instrument of gambling, or by any device of like character, obtains from any other person any money, chattel, valuable security or property; or,

(b) **Attempting.**—Attempts to commit such offence by actually engaging any person in any such game with intent to obtain money or other valuable thing from him.

2. **Arrest of offender.**—Every conductor, master or superior officer in charge of, and every clerk or employee when authorized by the conductor, master or superior officer in charge of, any railway train or steamboat, station or landing place in or at which any such offence, as aforesaid, is committed or attempted, shall, with or without warrant, arrest any person whom he has good reason to believe to have committed or attempted to commit any such offence, and take him before a justice, and make complaint of such offence on oath, in writing.

3. **Penalty for omitting.**—Every conductor, master or superior officer in charge of any such railway car or steamboat, who makes default in the discharge of any such duty is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than twenty dollars.

4. **Posting up section.**—It shall be the duty of every person who owns or works any such railway car or steamboat to keep a copy of this section posted up in some conspicuous part of such railway car or steamboat.

5. **Penalty.**—Every person who makes default in the discharge of such duty is liable to a penalty not exceeding one hundred dollars and not less than twenty dollars. 55-56 V., c. 29, s. 203.

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235. Betting and pool-selling.—Penalty.—Every one is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding one thousand dollars, who,—

(a) uses or knowingly allows any part of any premises under his control to be used for the purpose of recording or registering any bet or wager, or selling any pool; or,

(b) keeps, exhibits, or employs, or knowingly allows to be kept, exhibited or employed, in any part of any premises under his control, any device or apparatus for the purpose of recording any bet or wager or selling any pool; or,

(c) becomes the custodian or depository of any money, property or valuable thing staked, wagered or pledged; or,

(d) records or registers any bet or wager, or sells any pool, upon the result

(i) of any political or municipal election,

(ii) of any race,

(iii) of any contest or trial of skill or endurance of man or beast.

2. **Saving**.—The provisions of this section shall not extend to any person by reason of his becoming the custodian or depository of any money, property or valuable thing staked, to be paid to the winner of any lawful race, sport game or exercise, or to the owner of any horse engaged in any lawful race, or to bets between individuals or made on the race course of an incorporated association during the actual progress of a race meeting. 55-56 V., c. 29, s. 204.

The object of the legislature in enacting the latter part of sub sec. 2 of sec. 235 apparently was to reserve the race courses of incorporated associations to places where bets might be made during the actual progress of race meetings, without the bettors being subject to the penalties of that section. An agreement for the sale of betting and gaming privileges at a race meeting by an incorporated association, who are the lessees of an incorporated association, the owners of the race course, is not illegal. Stratford Turf Association v. Fitch (1897), 28 O. R., 579.

See R. v. Saunders (1906 and 1907), 12 C. C. C., 33 and 174.

236. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars who,—

(a) **Printing lottery scheme**.—Makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property, by lots, cards, tickets or any mode of chance whatsoever; or,

(b) **Selling lottery tickets, etc**.—Sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property, by lots, tickets or any mode of chance whatsoever; or,

(c) **Conducting lottery scheme**.—Conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers or chances, are the winners of any property so proposed to be advanced, loaned, given, sold or disposed of.

2. **Buying lottery tickets, etc**.—Every one is guilty of an offence and liable on summary conviction to a penalty of twenty dollars, who buys, takes or receives any such lot, ticket or other device as aforesaid.

3. **Lottery sale void.**—Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all property so sold, lent, given, bartered or exchanged, is liable to be forfeited to any person who sues for the same by action or information in any court of competent jurisdiction.

4. **Bona fide purchases.**—No such forfeiture shall affect any right or title to such property acquired by any *bona fide* purchaser for valuable consideration without notice.

5. **Foreign lottery included.**—This section includes the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, chance or share, in any such lottery, or the advertisement for sale of such ticket, chance or share, and the conducting or managing of any such scheme, contrivance or operation for determining the winners in any such lottery.

6. **Saving.**—This section does not apply to,—

(a) **Dividing real estate by lot.**—The division by lot or chance of any property by joint tenants or tenants in common, or persons having joint interests (*droits indivis*) in any such property; or,

(b) **Raffles at church bazaar.**—Raffles for prizes of small value at any bazaar held for any charitable or religious object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve, or other chief officer of the city, town or other municipality, wherein such bazaar is held, and the articles raffled for thereat have first been offered for sale and none of them are of a value exceeding fifty dollars;

(c) **London Art Union, etc.**—The Art Union of London, Great Britain, or the Art Union of Ireland. 55-56 V., c. 29, s. 205; 58-59 V., c. 40, s. 1; 1 E. VII., c. 42, s. 2; 6 E. VII., c. 6, s. 1.

The disposal by lottery or any mode of chance "of any property" under this section need not be any specific article or property, and the offence will be constituted by the fact that the winner obtains the privilege of choosing one from certain prizes offered. R. v. Lorrain (1896), 28 O. R., 123.

Provincial legislatures have no power to authorize the running of lotteries; and no action can be maintained for the recovery of money under a contract for the operation of a lottery scheme which would contravene the criminal law. Brault v. St. Jean Baptiste Association (1900), 4 C. C. C., 284.

The offer of prizes to the nearest guesser of the number of beans contained in a jar exhibited to view is not a lottery, as it is a matter of judgment or skill and not of chance. R. v. Dodds (1884), 4 O. R., 390.

A competition for a prize offered for the nearest estimates of the number of votes to be cast at a coming election and the sale of certificates of admission thereto in consideration of money paid or services performed, does not constitute a lottery offence under sec. 236. R. v. Johnston (1904), 7 C. C. C., 525.

See also R. v. Johnson, 6 C. C. C., 48; R. v. Fish (1906), 11 C. C. C., 201; R. v. Jamieson, 7 O. R., 149 and Hall v. Cox (1899), 1 Q. B., 198.

237. Penalty.—Every one is guilty of an indictable offence and liable to five years' imprisonment who,—

(a) **Not burying the dead.**—Without lawful excuse, neglects to perform any duty either imposed upon him by law or undertaken by him with reference to the burial of any dead human body or human remains; or,

(b) **Indignity to dead body.**—Improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not. 55-56 V., c. 29. s. 206.

Exposing the naked dead body of a child in or near the highway and within view therefrom is a common law nuisance. R. v. Clark, 15 Cox C. C., 171.

The neglect to decently bury a dead human body by a person who has undertaken to do so and has removed the body with that expressed intent is an indictable offence under this section, although such person was, apart from such undertaking, under no legal obligation in respect of the burial. R. v. Newcomb (1898), 2 C. C. C., 255.

VAGRANCY.

238. Vagrant.—Every one is a loose, idle or disorderly person or vagrant who,—

(a) **No visible means of support.**—Not having any visible means of subsistence, is found wandering abroad or lodging in any barn or outhouse, or in any deserted or unoccupied building, or in any cart or wagon, or in any railway carriage or freight car, or in any railway building, and not giving a good account of himself, or who, not having any visible means of maintaining himself, lives without employment;

(b) **Not maintaining family.**—Being able to work and thereby or by other means to maintain himself and family, wilfully refuses or neglects to do so;

(c) **Indecent exhibitions.**—Openly exposes or exhibits in any street, road, highway or public place, any indecent exhibition;

(d) **Begging.**—Without a certificate signed, within six months, by a priest, clergyman or minister of the Gospel, or two justices, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs, or goes about from door to door, or places him-

self or herself in any street, highway, passage or public place to beg or receive alms;

(e) **Loitering on highway.**—Loiters on any street, road, highway or public place, and obstructs passengers by standing across the footpath, or by using insulting language, or in any other way;

(f) **Disorderly conduct.**—Causes a disturbance in or near any street, road, highway or public place, by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers;

(g) **Wanton disturbances.**—By discharging firearms, or by riotous or disorderly conduct in any street or highway, wantonly disturbs the peace and quiet of the inmates of any dwelling-house near such street or highway;

(h) **Destroying property.**—Tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences;

(i) **Night walker.**—Being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people, and does not give a satisfactory account of herself;

(j) **Keeping house of ill-fame.**—Is a keeper or inmate of a disorderly house, bawdy-house or house of ill-fame, or house for the resort of prostitutes;

(k) **Frequenting.**—Is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or,

(l) **Supported by prostitution.**—Having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution. 55-56 V., c. 29, s. 207; 63-64 V., c. 46, s. 3.

If the person accused of being a vagrant, resides for a portion of the year with his parents at their request, they being able and willing to provide for his support, a conviction for vagrancy under this section on the ground of "not having had any visible means of maintaining himself, he had lived without employment," should be quashed. R. v. Riley (1898), R. J. Q., 7 Q. B., 198.

The evidence on a charge of vagrancy that the accused had chiefly supported himself by gaming and crime, must show that the gaming or crime took place during the time within or for which he is charged in the information of having been a vagrant. R. v. Riley, supra.

In order to constitute a wilful refusal or neglect on the part of a husband to maintain his family, it is necessary that he should be under a legal obligation to do so, and his failure to maintain his wife, who had left him without valid cause and refused to return, is not an offence under this section. R. v. Leclair (1898), R. J. Q. 7 Q. B., 287 and 2 C. C. C., 297.

A conviction should not be made upon a charge of keeping, or being an inmate of a bawdy-house upon evidence of general reputation only, and

the prosecution should be required to produce proof of acts or conduct from which the character of the house may be inferred; and the conduct and statements of the inmates of the alleged bawdy-house at the time of the arrest therein may properly be proved in support of the charge. R. v. St. Clair (1900), 3 C. C. C., 551.

A woman kept by a married man, and who has sexual intercourse with him alone, cannot be convicted under this section. R. v. Rehe (1897), 1 C. C. C., 63.

See also Smith v. the Queen, 4 M. L. R., 325; Ex parte Despatie, 9 L. N. (Montreal), 387; R. v. Mercier, 6 C. C. C., 44; R. v. Kneeland, 6 C.C.C., 81; H. v. H., 6 C. C. C., 165; R. v. McCormack, 7 C. C. C., 135; R. v. Collette, 10 C. C. C., 286; R. v. Leconte, 11 C. C. C., 41; R. v. Harkness (1906), 12 C. C. C., 54.

239. Penalty for vagrancy.—Proviso.—Every loose, idle or disorderly person or vagrant is liable, on summary conviction, to a fine not exceeding fifty dollars or to imprisonment, with or without hard labour, for any term not exceeding six months, or to both: Provided that no aged or infirm person shall be convicted for any reason within paragraph (a) of the last preceding section, as a loose, idle or disorderly person or vagrant in the county of which he has for the two years immediately preceding been a resident. 55-56 V., c. 29, s. 208; 57-58 V., c. 57, s. 1; 63-64 V., c. 46, s. 3.

This section only applies to authorize six months' imprisonment when imposed as the substantive punishment on summary conviction for keeping a bawdy-house, and not as a means of enforcing payment of a fine. R. v. Stafford (1898), 1 C. C. C., 239.

The omission of a provision for the costs of distress and conveying to gaol from the formal conviction will invalidate the conviction. R. v. Vantassel (1894), 5 C. C. C., 128.

PART VI.

OFFENCES AGAINST THE PERSON AND REPUTATION.

INTERPRETATION.

240. Definitions.—In this Part, unless the context otherwise requires,—

(a) '**Form of marriage**' includes any form either recognized as a valid form by the law of the place where it is gone through, or which, though not so recognized, is such that a marriage celebrated there in that form is recognized as binding by the law of the place where the offender is tried;

(b) '**Guardian**' includes any person who has in law or in fact the custody or control of any child referred to;

(c) '**Abondon,**' or '**Expose**' includes a wilful omission to take charge of any child referred to on the part of a person

legally bound to take charge of such child, as well as any mode of dealing with it calculated to leave it exposed to risk without protection. 55-56 V., c. 29, ss. 216 and 275; 63-64 V., c. 46, s. 3.

DUTIES TENDING TO THE PESERVATION OF LIFE.

241. Duty of person in charge to provide necessaries of life.—Every one who has charge of any other person unable by reason either of detention, age, sickness, insanity or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is, whether such charge is undertaken by him under any contract, or is imposed upon him by law, or by reason of his unlawful act, under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting, without lawful excuse, to perform such duty if the death of such person is caused, or if his life is endangered, or his health has been or is likely to be permanently injured, by such omission. 55-56 V., c. 29, s. 209.

See R. v. Senior (1899), 1 Q. B., 283; R. v. Squire, 3 Russell Cr. 6th ed., 13; R. v. Shepherd, L. & C., 147; R. v. Conde, 10 Cox C. C., 547.

242. Duty of head of family to provide necessaries.— Every one who as parent, guardian or head of a family is under a legal duty to provide necessaries for any child under the age of sixteen years is criminally responsible for omitting, without lawful excuse, to do so while such child remains a member of his or her household, whether such child is helpless or not, if the death of such child is caused, or if his life is endangered, or his health is or is likely to be permanently injured, by such omission.

2. **Criminal responsibility.**—Every one who is under a legal duty to provide necessaries for his wife is criminally responsible for omitting without lawful excuse so to do, if the death of his wife is caused, or if her life is endangered, or her health is or is likely to be permanently injured, by such omission. 55-56 V., c. 29, s. 210.

A person who engages the services of a child under sixteen years, placed out with him by his legal guardian under a contract for the child's services for a fixed period, whereby the party with whom he is placed engages to furnish the child with board, lodging, clothing, and necessaries, is not as to such child a "guardian or head of a family" so as to become criminally responsible, as such, under Criminal Code sec. 210 (now sec. 242), for ommitting to provide "necessaries" to such child while a member of his household. The relationship in such case is that of master and servant, and comes within the provisions of Criminal Code sec. 211 (now sec. 243), under which the master is criminally responsible only in respect of a failure to provide "necessary food, clothing, or lodging." R. v. Coventry (1898), 3 C. C. C., 541.

It must be shown that the parent or guardian was in the actual possession of means to provide for the child. R. v. Saunders, 7 C. & P., 277.

A present inability to support his wife may be proved by the accused by way of defence. R. v. Robinson (1897), 1 C. C. C., 28.

See R. v. Bowman (1898), 3 C. C. C., 410; R. v. Nasmith (1877), 42 U. C. Q. B., 242; R. v. Holmes (1898), 29 O. R., 362; R. v. Lapierre (1897), 1 C. C. C., 413.

The defendant may be convicted notwithstanding that his wife has in consequence of the neglect to supply her with necessaries left him, taking with her a small sum of money belonging to him. R. v. Pennock (1898), 18 C. L. T., 79.

The term "necessaries" in Code sec. 210 (now sec. 242), includes medicines and medical treatment in cases where ordinarily prudent persons would obtain them.

A conscientious objection to medical treatment because of a belief in the doctrines of the sect known as " Christian Scientists," is not a "lawful excuse" for omitting to provide medicines and medical aid, under Code sec. 210 (now sec. 242). R. v. Lewis (1903), 7 C. C. C., 261.

Where the husband's failure to support his wife caused no injury to the wife's health, she having been maintained by the charity of friends on the husband's default, such default does not give rise to criminal responsibility under Code sec. 210 (now sec. 242). R. v. Wilkes (1906), 11 C. C C., 226.

243. Duty of masters.—Criminal responsibility.—Every one who, as master or mistress, has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of sixteen years is under a legal duty to provide the same, and is criminally responsible for omitting, without lawful excuse, to perform such duty, if the death of such servant or apprentice is caused, or if his life is endangered, or his health has been or is likely to be permanently injured, by such omission. 55-56 V., c. 29, s. 211.

Under this section, a master is not criminally liable for failing to provide his servants with medical attendance or medicine. R. v. Coventry (1898), 3 C. C. C., 541.

It must be shewn that the master was in the actual possession of means to provide for his apprentice. R. v. Saunders, 7 C. & P., 277; R. v. Edwards, 8 C. & P., 611.

244. Omission of duty.—Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, being bound to perform any duty specified in the three last preceding sections, without lawful excuse neglects or refuses to do so, unless the offence amounts to culpable homicide. 55-56 V., c. 29, s. 215; 56 V., s. 32, s. 1.

245. Abandoning children under two years.—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully abandons or exposes any child under the age of two years, whereby its life is endangered or its health is permanently injured. 55-56 V., c. 29, s. 216.

R. v. Falkingham (1870), L. R., 1 C. C. R., 222; R. v. White (1871), L. R., 1 C. C. R., 311.

246. Duty of persons undertaking acts dangerous to life.—Every one who undertakes, except in cases of necessity, to administer surgical or medical treatment, or to do any other lawful act, the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill and care in doing any such act, and is criminally responsible for omitting, without lawful excuse, to discharge that duty if death is caused by such omission. 55-56 V., c. 29, s. 212.

See R. v. Chamberlain, 10 Cox C. C., 486; R. v. Whitehead, 3 C. & K., 202; R. v. Beer, 32 C. L. J., 416; R. v. Goodfellow (1906), 10 C. C. C., 424.

247. Duty of persons in charge of dangerous things.—Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes or maintains anything whatever which, in the absence of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform such duty, 55-56 V., c. 29, s. 213.

A corporation is not subject to indictment upon a charge of any crime the essence of which is either personal criminal intent or such a degree of negligence as amounts to a wilful incurring of the risk of causing injury to others. Criminal Code secs. 213 and 220 (now secs. 247 and 252), as to want of care in the maintenance of dangerous things, do not extend the criminal responsibility of corporations beyond what it was at common law. R. v. Great West Laundry Co. (1900), 3 C. C. C., 514.

Although a corporation cannot be guilty of manslaughter, it may be indicted, under Criminal Code sec. 252 (now sec. 284), for having caused grievous bodily injury by omitting to maintain in a safe condition a bridge or structure which it was its duty to so maintain, and this notwithstanding that death ensued at once to the person sustaining the grievous bodily injury. R. v. Union Colliery Co. (1900), 3 C. C. C., 523, affirmed by the Supreme Court, 4 C. C. C., 400 and 31 S. C. R., 81.

Under sec. 213 (now sec. 247), of the Criminal Code, a corporation may be indicted for omitting, without lawful excuse, to perform the duty of avoiding danger to human life from anything in its charge or under its control. The fact that the consequence of the omission to perform such duty might have justified an indictment for manslaughter in the case of an individual, is not a ground for quashing the indictment. As the Criminal Code provides no punishment for the offence, the common law punishment of a fine may be imposed on a corporation indicted under it. Union Colliery Co. v. R. (1900), 4 C. C. C., 400 (Supreme Court).

As to a corporation committing a criminal nuisance, see R. v. Toronto Ry. Co. (1900), 4 C. C. C., 4.

248. Duty to avoid omissions dangerous to life.—Every one who undertakes to do any act, the omission to do which is

or may be dangerous to life, is under a legal duty to do that act, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform that duty. 55-56 V., c. 29, s. 214.

See R. v. Beer (1895), 32 C. L. J., 416; R. v. Long, 4 C. & P., 398.
See also section 284.

249. Causing bodily harm to apprentices or servants.—Every one is guilty of an indictable offence and liable to three years imprisonment who, being legally liable as master or mistress to provide for any apprentice or servant, unlawfully does, or causes to be done, any bodily harm to any such apprentice or servant so that the life of such apprentice or servant is endangered or the health of such apprentice or servant has been, or is likely to be, permanently injured. 55-56 V., c. 29, s. 217.

A verdict for common assault is maintainable upon an indictment under this section. R. v. Bissonnette (1879), Ramsay's cases, 190.

HOMICIDE.

250. Definition.—Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever. 55-56 V., c. 29, s. 218.

Homicide not amounting to murder or manslaughter is either (1) excusable; (2) justifiable:—

(1) The term excusable homicide imports some fault in the party by whom it has been committed; but of a nature so trivial that the law excuses such homicide from the guilt of felony. Excusable homicide is said to be of two sorts: by misadventure, or upon a principle of self defence.

(2) Justifiable homicide is that to which no fault attaches. There are three cases: (a) where a criminal is executed, (b) where an officer in pursuit of his duty kills a person who resists, (c) where death is inflicted in order to prevent a crime.

Suicide is therefore not homicide.

251. When a child becomes a human being.—A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not.

2. **Killing child.**—The killing of such child is homicide when it dies in consequence of injuries received before, during or after birth. 55-56 V., c. 29, s. 219.

A living child in its mother's womb, or a child in the act of birth, even though such child may have breathed, is not a "human being," and the killing of such child before it is born is not homicide. R. v. Enoch, 5 C. & P., 539.

See also R. v. West (1848), 2 Car. & K., 784; R. v. Senior (1832), 1 Moody's C. C. R., 346.

As to the offence of killing an unborn child, see section 306.

252. Homicide when culpable.—Homicide may be either culpable or not culpable.

2. Homicide is culpable when it consists in the killing of any person, either by an unlawful act or by an omission, without lawful excuse, to perform or observe any legal duty, or by both combined, or by causing a person, by threats or fear of violence, or by deception, to do an act which causes that person's death, or by wilfully frightening a child or sick person.

3. **Offence.**—Culpable homicide is either murder or manslaughter.

4. **No offence.**—Homicide which is not culpable is not an offence. 55-56 V., c. 29, s. 220.

R. v. Towers (1814), 12 Cox C. C., 530; R. v. Martin (1881), 14 Cox C. C., 633.

For cases illustrating the subject, see 4 Blackstone, p. 178.

R. v. Scully (1824), 1 C. & P., 319; R. v. Huntley (1851), 3 Car. & K., 142; R. v. Howlett (1858), 1 F. & F., 91.

253. Procuring death by false evidence.—Procuring by false evidence the conviction and death of any person by the sentence of the law shall not be deemed to be homicide. 55-56 V., c. 29, s. 221.

Section 174 provides that perjury or subornation of perjury committed in order to procure the conviction of a person for any crime punishable by death, or imprisonment for seven years or more, may be punished by imprisonment for life.

254. Death within a year and a day.—No one is criminally responsible for the killing of another unless the death takes place within a year and a day of the cause of death.

2. **How reckoned.**—The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place.

3. **Idem.**—Where the cause of death is an omission to fulfil a legal duty the period shall be reckoned inclusive of the day on which omission ceased.

4. **Idem.**—When death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last. 55-56 V., c. 29, s. 222.

See 1 Hawkins, cap. 23, sec. 90.

255. Killing by influence on the mind.—No one is criminally responsible for the killing of another by any influence on

the mind alone, nor for the killing of another by any disorder or disease arising from such influence, save in either case by wilfully frightening a child or sick person. 55-56 V., c. 29, s. 223.

256. Acceleration of death.—Every one who, by any act or omission, causes the death of another, kills that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death while labouring under some disorder or disease arising from some other cause. 55-56 V., c. 29, s. 224.

A. inflicts bodily injury on B. who at the time is so ill that she could not possibly have lived more than six weeks if she had not been struck. In consequence B. dies earlier than she otherwise would. A. is guilty of culpable homicide. R. v. Fletcher (1841), 1 Russell Cr. 703.

257. Death which might have been prevented.—Every one who, by any act or omission, causes the death of another, kills that person, although death from that cause might have been prevented by resorting to proper means. 55-56 V., c. 29, s. 225.

258. Causing injury the treatment of which brings death.—Every one who causes a bodily injury, which is of itself of a dangerous nature to any person, from which death results, kills that person, although the immediate cause of death be treatment proper or improper applied in good faith. 55-56 V., c. 29, s. 226.

Where in a duel a wound is given which in the judgment of competent medical advisers is dangerous, and the treatment which they *bona fide* adopt is the immediate cause of death, the party who inflicts the wound is guilty of culpable homicide. R. v. Pym, 1 Cox C. C., 339.
See also R. v. Holland (1841), 2 Moody & R., 351.

MURDER AND MANSLAUGHTER.

259. Intention.—Culpable homicide is murder,—

(a) if the offender means to cause the death of the person killed;

(b) if the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and is reckless whether death ensues or not;

(c) if the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;

(d) if the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired

that his object should be effected without hurting any one. 55-56 V., c. 29, s. 227.

The common law definition of murder is: the killing any person under the King's peace, with malice prepense or aforethought, either express or implied by law. 1 Hawkins P. C. c. 31, s. 3.

It is a general rule that all homicide is presumed to be malicious until the contrary appears from circumstances of alleviation, excuse or justification.

Corpus delicti.—Lord Hale (2 P. C., 290) held that a conviction of murder or manslaughter cannot be had unless the fact be proved to be done or at least the body found dead. But this rule must be taken with some qualifications; and circumstances may be sufficiently strong to shew the fact of the murder, though the body be never found. 3 Russell Cr., 6th ed. 158.

See on this point, R. v. Hindmarsh (1792), 2 Leach 569 and R. v. Armstrong (1875), 13 Cox C. C., both being murders committed at sea.

Also R. v. Hopkins (1838), 8 C. & P., 591; R. v. Pitts (1842), Car. & M., 284; R. v. Burton, Dearsley's Crown Cases, 282; R. v. Cheverton, 2 F. & F., 833; R. v. Clowes, 4 C. & P., 221; The People v. Palmer, 119 N. Y. Rep., 110 and the Canadian case of R. v. Charles King (1905), 9 C. C. C., 426.

Dying declaration as evidence.—A dying declaration of the accused that he was shot in the body and was "going fast," indicates a settled and hopeless consciousness that he was in a dying state and his declaration is admissible in evidence. R. v. Davidson (1898), 1 C. C. C., 351.

The court must be satisfied that whatever statement is admitted in evidence must be shewn by credible testimony to have been made in full belief of approaching death, with an abandonment of all hope of life. R. v. Sparham (1875), 25 U. C. C. P., 143, 154.

The fact that the person making a dying declaration subsequently entertains a hope of recovery, is irrelevant, except in so far as it may be evidence of his state of mind at the time of making the declaration. R. v. Davidson, supra.

See also R. v. Laurin (1902), 6 C. C. C., 104; R. v. Louie (1903), 7 C. C. C., 347; R. v. Aho (1904), 8 C. C. C., 453; R. v. Magyar (1906), 12 C. C. C., 114.

Evidence to prove intent.—Evidence is admissible on a charge of murder by poisoning to shew the administration of the same kind of poison by the prisoner to another person, as proving intent. R. v. Sternaman (1898), 1 C. C. C., 1. (In this case a new trial was granted by the Minister of Justice under Code sec. 1022 on the discovery of new evidence and the prisoner was acquitted.

On a trial for murder, the alleged motive being the obtaining of insurance moneys on policies effected by the accused on the life of the deceased, evidence of a previous attempt by the accused to insure another person for his own benefit cannot be given in evidence against him. R. v. Hendershot & Welter (1895), 26 O. R., 678.

See also on this point Makin v. Attorney General for N. S. W. (1894), A. C., 65; R. v. Heesom (1878), 14 Cox C. C., 40; R. v. Geering (1849), 18 L. J., (N. S.), M. C., 215.

Judge's charge.—Failure to instruct the jury in a trial for murder upon the distinction between murder and manslaughter is a ground for ordering a new trial. R. v. Wong On (1904), 8 C. C. C., 423.

See on the same point the State v. Smith, 6 R. I., 33 and 34.

See also R. v. Fouquet (1905), 10 C. C. C., 255.

As to the admissibility in evidence of confessions made by a person accused of murder, see the cases cited under section 685.

Upon the trial of a person indicted for murder, no witnesses were called on behalf of the accused. It was held that the counsel for the defence had the right to address the jury last. R. v. Leblanc (1873), 29 C. L. J., 729.

On a trial for murder by shooting, evidence of statements made by the person shot immediately after the shooting and while under apprehension of further danger from the accused and requesting assistance and protection therefrom, is admissible as part of the *res gestae*, even though the person accused of the offence was absent at the time when such statements were made. Gilbert v. R. (1907), 12 C. C. C., 127 (Supreme Court).

260. Culpable homicide murder in certain cases.—In case of treason and the other offences against the King's authority and person mentioned in Part II., piracy and offences deemed to be piracy, escape or rescue from prison or lawful custody, resisting lawful apprehension, murder, rape, forcible abduction, robbery, burglary or arson, culpable homicide is also murder, whether the offender means or not death to ensue, or knows or not that death is likely to ensue,—

(a) **If grievous bodily harm intended.**—If he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury; or,

(b) **Narcotic administered.**—If he administers any stupefying or overpowering thing for either of the purposes aforesaid, and death ensues from the effects thereof; or,

(c) **Wilfully stopping the breath.**—If he by any means wilfully stops the breath of any person for either of the purposes aforesaid, and death ensues from such stopping of the breath. 55-56 V., c. 29, s. 228.

See Gilbert v. R. (1907), 12 C. C. C., 127.

261. Homicide reduced to manslaughter.—Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

2. **Provocation defined.**—Any wrongful act or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

3. **Question of fact.—Proviso.**—Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact: Provided that no one shall be held to give

provocation to another by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person.

4. **Exception. Illegal arrest.**—The illegality of an arrest shall not necessarily reduce an offence of culpable homicide from murder to manslaughter, but if the illegality was known to the offender it may be evidence of provocation. 55-56 V., c. 29, s. 229.

Murder is unlawful homicide with malice aforethought; manslaughter is unlawful homicide without malice aforethought.

R. v. Doherty (1887), 16 Cox C. C., 306.

By virtue of s.s. 2, a verbal insult may be such provocation as will reduce culpable homicide, which would otherwise be murder, to manslaughter. At common law, no words, no matter how grossly insulting, could have that effect. R. v. McDowell (1865), 25 U. C. Q. B., 108.

All questions as to motive, intent, heat of passion must be left to the jury. R. v. McDowell, supra.

Where there are no blows there must be a provocation at least as great as blows; for instance, a man who discovers his wife in the act of adultery and thereupon kills the adulterer is only guilty of manslaughter. R. v. Rothwell (1871), 12 Cox C. C., 145, 147. The practice of juries, however, is to acquit.

If it is proved that the blow which caused the death was given in the heat of passion caused by sudden provocation, the inference of malice is rebutted. R. v. Eagle (1862), 2 F. & F., 827.

If there be a provocation by blows which would not of itself render the killing manslaughter, but if it be accompanied by such provocation by means of words and gestures as would be calculated to produce a degree of exasperation equal to that which would be produced by a violent blow, it may be regarded as reducing the crime to that of manslaughter. R. v. Sherwood (1844), 1 C. & K., 556.

See also R. v. Smith (1865), 3 F. & F., 1066; R. v. Brennan (1896), 27 O. R., 659; R. v. Welsh (1869), 11 Cox C. C., 336; R. v. Fisher (1837), 8 C. & P., 182.

262. Manslaughter.—Culpable homicide, not amounting to murder, is manslaughter. 55-56 V., c. 29, s. 230.

Homicide under a mistaken Indian belief that the object shot at was not a human being, but an evil spirit which had assumed human form and would attack human beings, is manslaughter. R. v. Machekequonabe (1897), 2 C. C. C., 138.

A corporation cannot be guilty of manslaughter. R. v. Union Colliery Co. (1900), 4 C. C. C., 400.

A master is criminally liable if he fails to reasonably care for his servant. When a boy, fourteen years of age, died for want of proper treatment, after having been frozen, the master who knew the facts was held to be guilty of manslaughter. R. v. Brown (1893), N. W. T. Sup. C. Rep. I. no. 4, p. 35.

See also R. v. Swindall (1846), 2 C. & K., 230; R. v. Haines (1847), 2 C. & K., 368; R. v. Ledger (1862), 2 F. & F., 857; R. v. Longbottom (1849), 3 Cox C. C., 439; R. v. Harrington (1851), 5 Cox C. C., 231; R. v. Walker (1824), 1 C. & P., 320; R. v. Cavendish (1873), 8 Tr. Rep. Com. Law, 178; R. v. Marriott (1838), 8 C. & P., 425; R. v. Finney (1874), 12 Cox C. C., 625;

R. v. Nicholls (1875), 14 Cox C. C., 75; R. v. Van Burchell (1829), 3 C. & P., 629.

A medical man is bound to use proper skill and caution in using a poisonous drug or dangerous instrument; and if death results from his failure to do so he is guilty of manslaughter. But he would be guilty of no crime if death was caused by a mere error in judgment. R. v. McLeod (1874), 12 Cox C. C., 534.

Contributory negligence on the part of the person killed is no defence to an indictment for manslaughter. R. v. Swindall, supra.

R. v. Hutchinson (1864), 9 Cox C. C., 555; R. v. Kew (1872), 12 Cox C. C., 355; R. v. Dant (1865), 34 L. J., M. C., 119; R. v. Dudley and Stephens (1884), 14 Q. B. D., 273; R. v. Salmon et al. (1880), 6 Q. B. D., 79; R. v. Morby (1882), 8 Q. B. D., 571.

263. Punishment for murder.—Every one who commits murder is guilty of an indictable offence and shall, on conviction thereof, be sentenced to death. 55-56 V., c. 29, s. 231.

264. Attempts.—Every one is guilty of an indictable offence and liable to imprisonment for life, who, with intent to commit murder,—

(a) **Administering poison.**—Administers any poison or other destructive thing to any person, or causes any poison or destructive thing to be so administered or taken, or attempts to administer it, or attempts to cause it to be so administered or taken; or,

(b) **Wounding.**—By any means whatever wounds or causes any grievous bodily harm to any person; or,

(c) **Shooting.**—Shoots at any person, or, by drawing a trigger or in any other manner, attempts to discharge at any person any kind of loaded arms; or,

(d) **Drowning.**—Attempts to drown, suffocate, or strangle any person; or,

(e) **Destroying building.**—Destroys or damages any building by the explosion of any explosive substance; or,

(f) **Burning ships.**—Sets fire to any ship or vessel or any part thereof, or any part of the tackle, apparel or furniture thereof, or to any goods or chattels being therein; or,

(g) **Casting away vessel.**—Casts away or destroys any vessel; or,

(h) **By other means.**—By any other means attempts to commit murder. 55-56 V., c. 29, s. 232.

"Administering poison."—Where the charge is in respect of the administering of poison, evidence of administering at different times may be given to shew the intent. R. v. Mogg (1830), 4 C. & P., 364.

Where the accused with intent to murder gave poison to A. to administer as a medicine to B., but A. neglecting to give it to B., it was by chance given to B. by a child, this was held an administering by the accused. R. v. Michael (1840), 9 C. & P., 356.

See also R. v. Harley (1830), 4 C. & P., 369; R. v. Cluderoy (1840), 2 C. & K., 907; R. v. Stopford (1870), 11 Cox C. C., 643.

"Wounding or causing grievous bodily harm."—As to what constitutes a wound:—To constitute a wound the continuity of the skin must be broken. R. v. Wood (1830), 1 Moody C. C., 278.

There must be a division not merely of the cuticle or upper skin, but of the whole skin. R. v. McLaughlin (1838), 8 C. & P., 635.

See also R. v. Smith (1837), 8 C. & P., 173; Shea v. R. (1848), 3 Cox C. C., 141; R. v. Briggs (1831), 1 Moody C. C., 318.

Shooting with intent to murder:—When a person shoots at another, wrongly supposing him to be a third person whom he desires to murder, he is guilty of an offence under this section. R. v. Smith (1855), 25 L. J. M. C., 29.

If a person fires a loaded revolver at a group of people, not aiming at any one in particular, he will be held guilty of shooting any person he may thus hit, with intent to do grievous bodily harm to that person. R. v. Fretwell (1864), 33 L. J. M. C., 128.

On the trial of a person accused of attempt to murder by shooting, evidence that he had burglar's tools in his possession at the time is admissible, as tending to prove criminal intent. R. v. Mooney (1905), 11 C. C. C., 333.

Attempt to murder by other means:—Where a woman jumped out of a window to avoid the violence of her husband, it was held that to constitute this offence, it must be proved that he intended by his conduct to make her jump out. R. v. Donovan (1850), 4 Cox C. C., 401.

265. Letters threatening murder.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person. 55-56 V., c. 29, s. 233.

Threats verbally made to burn the complainant's buildings are not indictable under the Criminal Code, and give rise only to proceedings to force the offender to give security to keep the peace. Ex parte Welsh (1898), 2 C. C. C., 35.

266. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who,—

(a) **Conspiring to murder.**—Conspires or agrees with any person to murder or to cause to be murdered any other person, whether the person intended to be murdered is a subject of His Majesty or not, or is within His Majesty's dominions or not; or,

(b) **Counselling murder.**—Counsels or attempts to procure any person to murder such other person anywhere, although such person is not murdered in consequence of such counselling or attempted procurement. 55-56 V., c. 29, s. 234.

The offence of counselling murder may be committed by the publication of a newspaper article exulting in the assassination of a foreign monarch and commending it as an example to revolutionists throughout the world; and the counselling need not be directed to any particular person. R. v. Most (1881), 7 Q. B. D., 244.

267. Accessory after the fact.—Every one is guilty of an indictable offence and liable to imprisonment for life, who is an accessory after the fact to murder. 55-56 V., c. 29, s. 235.

The accused must be proved to have done some act to assist the murderer personally. R. v. Chapple (1840), 9 C. & P., 355.

See also R. v. Greenacre (1837), 8 C. & P., 35; R. v. Lee (1834), 6 C. & P., 536.

268. Punishment for manslaughter.—Every one who commits manslaughter is guilty of an indictable offence and liable to imprisonment for life. 55-56 V., c. 29, s. 236.

See R. v. Great West Laundry Co. (1900), 3 C. C. C., 514.

SUICIDE.

269. Aiding or counselling.—Every one is guilty of an indictable offence and liable to imprisonment for life who counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or who aids or abets any person in the commission of suicide. 55-56 V., c. 29, s. 237.

At common law, if two persons mutually agreed to commit suicide together, and the means employed to produce death only took effect upon one of them, the survivor would be held to be guilty of the murder of the one who died, and therefore liable to be sentenced to death. R. v. Allison (1838), 8 C. & P., 418; R. v. Dyson (1823), R. & R., 523.

But under Code, the survivor would only be liable to imprisonment for life.

Held that a person cannot be tried for inciting another to commit suicide, although the latter actually does so. R. v. Leddington (1839), 9 C. & P., 79.

270. Attempt.—Every one who attempts to commit suicide is guilty of an indictable offence and liable to two years' imprisonment. 55-56 V., c. 29, s. 238.

This offence was a misdemeanour at common law. R. v. Burgess (1862), 9 Cox C. C., 302.

Mere intention to commit the offence does not constitute an attempt. R. v. Eagleton (1855), Dears. 515, 538.

NEGLECT IN CHILDBIRTH AND CONCEALING DEAD BODY.

271. Neglecting to obtain assistance in childbirth.—Every woman is guilty of an indictable offence who, with either of the intents in this section mentioned, being with child and being about to be delivered, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or dies, either just before, or during, or shortly after birth, unless she proves that such death or permanent injury was not caused by such neglect, or by any wrongful act to which she was a party, and is liable,—

(a) Penalty.—If the intent of such neglect be that the child shall not live, to imprisonment for life;

(b) **Penalty.**—If the intent of such neglect be to conceal the fact of her having had a child, to imprisonment for seven years. 55-56 V., c. 29, s. 239.

See R. v. Knights (1860), 2 F. & F., 46; R. v. Handley (1874), 13 Cox C. C., 79.

272. Concealing dead body of child.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who disposes of the dead body of any child in any manner, with intent to conceal the fact that its mother was delivered of it, whether the child died before, or during, or after birth. 55-56 V., c. 29, s. 240.

As to what is a "child" within the meaning of this section, see R. v. Colmer (1864), 9 Cox C. C., 506.

A foetus which has not reached the period at which it might have been born alive is not a "child." R. v. Berriman (1854), 6 Cox C. C., 388.

The mere denial of the birth is not sufficient proof of intent to conceal. It must be shewn that the accused did some act of disposal of the body after the child was dead. R. v. Turner (1839), 8 C. & P., 755.

The body found must be identified as being that of the child of which she is alleged to have been delivered. R. v. Williams (1871), 11 Cox C. C., 684.

See also R. v. Piche (1879), 30 U. C. C. P., 409; R. v. Higley (1830), 4 C. & P., 366; R. v. Douglas (1836), 1 Moody's C. C., 480; R. v. May (1867), 10 Cox C. C., 448; R. v. Bate (1871), 11 Cox C. C., 686.

BODILY INJURIES AND ACTS AND OMISSIONS CAUSING DANGER TO THE PERSON.

273. Wounding with intent.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, unlawfully by any means wounds or causes any grievous bodily harm to any person, or shoots at any person, or by drawing a trigger, or in any other manner, attempts to discharge any kind of loaded arms at any person. 55-56 V., c. 29, s. 241.

The intent may be inferred from the act committed. R. v. Le Dante, 2 Geldert & Oxley (N. S.), 401.

A wounding may be either with or without any weapon or instrument, but the skin must be broken. R. v. Wood (1830), 1 Moody C. C., 278; R. v. Briggs (1831), 1 Moody C. C., 318.

See also Re Cronan (1874), 24 U. C. C. P., 106; R. v. Bray (1883), 15 Cox C. C., 197.

Upon a charge of shooting with intent to do grievous bodily harm in which the plea is self-defence, it is a question for the jury whether the

assault upon the accused, which had provoked the shooting, had ended or was still being pursued. R. v. Ritter (1904), 8 C. C. C., 31.

274. Wounding—Bodily harm.—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument. 55-56 V., c. 29, s. 242.

Justices of the Peace have no power on a preliminary investigation before them of a charge of unlawfully wounding, to reduce the charge to one of common assault, over which they would have summary jurisdiction.

A conviction recorded by justices on such a case upon a plea of guilty to the charge as reduced, is not a bar to an indictment for unlawfully wounding, based upon the same state of facts, and does not support a plea of *autrefois* convict. R. v. Lee (1897), 2 C. C. C., 233; Miller v. Lea (1898), 2 C. C. C., 282.

Upon a summary trial for inflicting grievous bodily harm, the magistrate may convict instead for the lesser offence of common assault in like manner as a jury might do. R. v. Coolen (1903), 7 C. C. C., 522.

See also R. v. Oliver (1860), Bell C. C., 287; R. v. Canwell, 11 Cox C. C., 263.

275. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully,—

(a) **Shooting at the King's vessels.**—Shoots at any vessel belonging to His Majesty or in the service of Canada; or,

(b) **Wounding public officer.**—Maims or wounds any public officer engaged in the execution of his duty or any person acting in aid of such officer. 55-56 V., c. 29, s. 243.

As to who is a "public officer," see section 2 (s.s. 29).

To justify a sentence of more than three years' imprisonment for assault and wounding a public officer, the charge must allege that the offence was committed while the officer was engaged in the execution of his duty.

A mere description of the assaulted party in the information as an acting detective does not justify a sentence of seven years on a plea of guilty, nor does it imply that the assault took place while the officer was engaged in the execution of his duty. R. v. Dupont (1900), 4 C. C. C., 566.

276. Penalty. Offence.—Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped, who with intent thereby to enable himself or any other person to commit, or with intent thereby to assist any other person in committing, any indictable offence,—

(a) **By strangling.**—By any means whatsoever, attempts to choke, suffocate or strangle any other person, or by any means calculated to choke, suffocate or strangle, attempts to render any other person insensible, unconscious or incapable of resistance; or

(b) **By narcotic.**—Unlawfully applies or administers to, or causes to be taken by, or attempts to apply or administer to, or

attempts or causes to be administered to or taken by, any person, any chloroform, laudanum or other stupefying or over-powering drug, matter or thing. 55-56 V., c. 29, s. 244.

277. Administering poison to endanger life.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who unlawfully administers to, or causes to be administered to or taken by any other person, any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm. 55-56 V., c. 29, s. 245.

Whether or not a drug is a "noxious thing" within the meaning of this section, may depend entirely upon the quantity administered, according to the nature of the drug. R. v. Hennah (1877), 13 Cox C. C., 547; R. v. Cramp (1880), 5 Q. B. D., 307.

On a charge of murder by poison, evidence is admissible of the administration of the same kind of poison by the accused to another person, as proving intent; and evidence of similar symptoms of arsenical poisoning attending the death of the prisoner's former husband is likewise admissible on her trial for the alleged murder of her second husband by poison. R. v. Sternaman (1898), 1 C. C. C., 1: Makin v. Attorney General for New South Wales (1894), A. C., 57; R. v. Geering (1849), 18 L. J., N. S. M. C., 215; R. v. Garner (1863), 3 F. & F., 681; 4 F. & F., 346; R. v. Gray (1866), 4 F. & F., 1102; R. v. Heeson (1878), 14 Cox C. C., 40; R. v. Flannagan (1884), 15 Cox C. C., 403.

278. Administering poison with intent to injure.—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing, with intent to injure, aggrieve or annoy such person. 55-56 V., c. 29, s. 246.

If any grievous bodily harm is in fact inflicted, the offence comes under section 277. Tulley v. Corrie (1867), 10 Cox C. C., 640.

Where the defendant administered cantharides to a woman and the jury found that it was administered with the intent to excite her sexual passion and desire, in order that the defendant might have connection with her, this was held to be an administering with intent to "injure, aggrieve and annoy" her. R. v. Wilkins (1861), 9 Cox C. C., 20; 31 L. J., M. C., 72.

See also cases cited under section 277.

279. Causing bodily injuries by explosives.—Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully and by the explosion of an explosive substance burns, maims, disfigures, disables or does any grievous bodily harm to any person. 55-56 V., c. 29, s. 247.

280. Intent to harm.—Every one who unlawfully,—

(a) with intent to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, whether any bodily harm is effected or not,

(i) **Explosives.**—Causes any explosive substance to explode,

(ii) **Sending explosives.**—Sends or delivers to, or causes to be taken or received by, any person any explosive substance, or any other dangerous or noxious thing,

(iii) **Applying to person explosives.**—Puts or lays at any place, or casts or throws at or upon, or otherwise applies to, any person any corrosive fluid, or any destructive or explosive substance; or,

(b) **Throwing explosives against vessel.**—Places or throws in, into, upon, against or near any building, ship or vessel an explosive substance, with intent to do any bodily injury to any person, whether or not any explosion takes place and whether or not any bodily injury is effected;

Penalty.—Is guilty of an indictable offence and liable, in cases within paragraph (a) of this section, to imprisonment for life, and in cases within paragraph (b) of this section to fourteen years' imprisonment. 55-56 V., c. 29, s. 248.

Unless the contrary be proved the intention will be evidenced by the act; and the question of intent is for the jury. R. v. Rhenwick Williams (1790), 1 Leach, 533; R. v. Saunders, 14 Cox C. C., 180.

Throwing oil of vitriol in a person's face has been held not to be a "wounding." R. v. Murrow (1835), Moody C. C., 456.

281. Setting spring guns and man-traps.—Every one is guilty of an indictable offence and liable to five years' imprisonment who sets or places, or causes to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that the same or whereby the same may destroy, or inflict grievous bodily harm upon, any trespasser or other person coming in contact therewith.

2. **Permitting the same to be set.**—Every one who knowingly and wilfully permits any such spring-gun, man-trap or other engine which has been set or placed by some other person, in any place which is in, or afterwards comes into, his possession or occupation, to continue so set or placed shall be deemed to have set or placed such gun, trap or engine with such intent as aforesaid.

3. **Exception.**—This section does not extend to any gin or trap usually set or placed with the intent of destroying vermin or noxious animals. 55-56 V., c. 29, s. 249.

As to what instruments do, or do not, come within the terms of this section, see Jordin v. Crump (1841), 8 M. & W., 782.

If death is caused by unlawfully setting a spring gun, the person setting it is guilty of manslaughter. R. v. Heaton (1896), 60 J. P., 508.

282. Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully,—

(a) **Intent to injure traveller.**—With intent to injure or to endanger the safety of any person travelling or being upon any railway,

(i) **Stones on railway.**—Puts or throws upon or across such railway any wood, stone, or other matter or thing,

(ii) **Removing sleeper or rail.**—Takes up, removes or displaces any rail, railway switch, sleeper or other matter or thing belonging to such railway, or injures or destroys any track, bridge or fence of such railway, or any portion thereof,

(iii) **Diverting points, etc.**—Turns, moves or diverts any point or other machinery belonging to such railway,

(iv) **Removing signal.**—Makes or shows, hides or removes any signal or light upon or near to such railway,

(v) **Otherwise.**—Does or causes to be done any other matter or thing with such intent; or,

(b) **Throwing anything at car, etc.**—Throws, or causes to fall or strike at, against, into or upon any engine, tender, carriage or truck used and in motion upon any railway, any wood, stone or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage or truck, or in or upon any other engine, tender, carriage or truck of any train of which such first mentioned engine, tender, carriage or truck forms part. 55-56 V., c. 29, s. 250.

An acquittal under this section will not bar an indictment under sec. 283. R. v. Gilmore (1882), 15 Cox C. C., 85.

283. Wantonly endangering safety of persons on railways.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by any wilful omission or neglect of duty, endangers or causes to be endangered the safety of any person conveyed or being in or upon a railway, or aids or assists therein. 55-56 V., c. 29, s. 251.

In an English case it was held that a railway which had not commenced to be used for passenger traffic, but only for carrying materials and workmen, was within the terms of an enactment similar to this section. R. v. Bradford (1860), Bell C. C., 268.

284. Causing bodily injury.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by doing negligently or omitting to do any act which it is his duty to do, causes grievous bodily injury to any other person. 55-56 V., c. 29, s. 252.

Although a corporation cannot be guilty of manslaughter, it may be indicted, under Criminal Code section 252 (now sec, 284), for having caused grievous bodily injury by omitting to maintain in a safe condition a

bridge or structure which it was its duty to so maintain, and this notwithstanding that death ensued at once to the person sustaining the grievous bodily injury.

A fine is the punishment which must be substitutetd under Cr. Code sec. 639 (now sec. 920), in the case of a corporation, in lieu of the imprisonment mentioned in this section, and the amount is in the discretion of the court. (Code sec. 1029).

The expression "grievous bodily injury" includes injuries immediately resulting in death, and as a corporation is not amenable to a charge of manslaughter, the death is as to it a circumstance in aggravation of the crime, and does not enlarge the nature of the offence. R. v. Union Colliery Co. (1900), 3 C. C. C., 523, affirmed by the Supreme Court of Canada, 4 C. C. C., 400.

In Pharmaceutical Society v. London Supply Association, 5 A. C., 857, Lord Blackburn said: "I quite agree that a corporation cannot, in one sense, commit a crime—a corporation cannot be imprisoned, if imprisonment be the sentence for the crime; a corporation cannot be hanged or put to death, if that be the punishment for the crime, and so, in these senses, a corporation cannot commit a crime. But a corporation may be fined, and a corporation may pay damages."

The procedure of the Criminal Code as to summary convictions does not apply to corporations. Ex parte Woodstock Electric Light Co. (1898), 4 C. C. C., 107.

But the opposite conclusion was arrived at in the later case of R. v. Toronto Railway Co. (1898), 2 C. C. C., 471.

285. Injuring persons by furious driving.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, having the charge of any carriage or vehicle, by wanton or furious driving, or racing or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person. 55-56 V., c. 29, s. 253.

An act is "wilfully" done if the defendant intentionally did it knowing that bodily harm to some person is likely to result. R. v. Holroyd (1841) 2 M. & Rob., 339.

286. Penalty.—Every one is guilty of an indictable offence and liable to seven years' imprisonment,—

(a) **Impeding shipwrecked person.**—Who prevents or impedes, or endeavours to prevent or impede, any shipwrecked person in his endeavour to save his life; or,

(b) **Impeding person assisting.**—Who without reasonable cause prevents or impedes, or endeavours to prevent or impede, any person is his endeavour to save the life of any shipwrecked person. 55-56 V., c. 29, s. 254; 56 V., c. 32, s. 1.

287. Penalty.—Every one is guilty of an offence and liable, on summary conviction, to a fine or imprisonment with or without hard labour, or both, who,—

(a) **Hole in ice unguarded.**—Cuts or makes, or causes to be cut or made, any hole, opening, aperture or place, of sufficient size or area to endanger human life, through the ice on any

navigable or other water open to or frequented by the public, and leaves such hole, opening, aperture or place, while it is in a state dangerous to human life, whether the same is frozen over or not, uninclosed by bushes or trees or unguarded by a guard or fence, of sufficient height and strength to prevent any person from accidentally riding, driving, walking, skating or falling therein; or,

(b) **Unused mine unguarded.**—Being the owner, manager or superintendent of any abandoned or unused mine or quarry or property upon or in which there is any excavation of a sufficient area and depth to endanger human life, leaves the same unguarded and uninclosed by a guard or fence of sufficient height and strength to prevent any person from accidentally riding, driving, walking or falling therein; or,

(c) **Neglect to make inclosure.**—Omits within five days after conviction of any such offence to so guard or inclose the same or to construct around or over such exposed opening or excavation a guard or fence of such height and strength.

2. **Neglect to guard hole.**—Every one whose duty it is to guard such hole, opening, aperture or place is guilty of manslaughter if any person loses his life by accidentally falling therein while the same is so unguarded or uninclosed. 55-56 V., c. 29, s. 255.

288. Sending unseaworthy ships to sea.—Every one is guilty of an indictable offence and liable to five years' imprisonment who sends, or attempts to send, or is a party to sending, a ship registered in Canada to sea, or on a voyage on any of the inland waters of Canada, or on a voyage from any port or place on the inland waters of Canda to any port or place on the inland waters of the United States, or on a voyage from any port or place on the inland waters of the United States to any port or place on the inland waters of Canada in such an unseaworthy state, by reason of overloading or underloading or improper loading, or by reason of being insufficiently manned, or from any other cause, that the life of any person is likely to be endangered thereby, unless he proves that he used all reasonable means to ensure her being sent to sea or on such voyage in a seaworthy state, or that her going to sea or on such voyage in such unseaworthy state was, under the circumstances, reasonable and justifiable. 55-56 V., c. 29, s. 256; 56 V., c. 32, s. 1.

Code section 595 provides that no person shall be prosecuted for an offence under this section without the consent of the Minister of Marine and Fisheries.

289. Taking same to sea.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, being the

master of a ship registered in Canada, knowingly takes such ship to sea, or on a voyage on any of the inland waters of Canada, or on a voyage from any port or place on the inland waters of Canada to any port or place on the inland waters of the United States, or on a voyage from any port or place in the United States, to any port or place on the inland waters of Canada, in such an unseaworthy state, by reason of overloading or underloading or improper loading, or by reason of being insufficiently manned, or from any other cause, that the life of any person is likely to be endangered thereby, unless he proves that her going to sea or on such voyage in such unseaworthy state was, under the circumstances, reasonable and justifiable. 55-56 V., c. 29, s. 257.

ASSAULTS.

290. Definition.—An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening, by any act or gesture, to apply force to the person of another, if the person making the threat has, or causes the other to believe, upon reasonable grounds, that he has present ability to effect his purpose, and in either case, without the consent of the other or with such consent, if it is obtained by fraud. 55-56 V., c. 29, s. 258.

The crime of assault may be committed, although the party assaulted may have consented to fight. R. v. Buchanan (1898), 1 C. C. C., 442.

An indictment for rape includes the lesser charge of assault, and a verdict thereon of guilty of common assault is properly followed by a conviction, although the information was laid more than six months after the offence was committed. R. v. Edwards (1898), 2 C. C. C., 96.

To discharge a pistol loaded with powder and wadding at a person within such a distance as that the party might have been hit, is an assault. R. v. Cronan (1874), 24 U. C. C. P., 106; R. v. St. George (1840), 9 C. & P., 483.

What is termed "battery" at common law is now an assault under this section. See Coward v. Baddeley (1859), 4 H. & N., 478.

291. Common assaults.—Every one who commits a common assault is guilty of an indictable offence and liable, if convicted upon an indictment, to one year's imprisonment, or to a fine not exceeding one hundred dollars, and on summary conviction to a fine not exceeding twenty dollars and costs, or to two months' imprisonment, with or without hard labour. 55-56 V., c. 29, s. 265.

See the cases cited under the preceding section.

Section 732 provides that a charge of common assault may be tried summarily in any case where neither of the parties object. But even if

there is no objection on behalf of either of the parties, the justice need not try the case summarily if he deems it advisable that there should be a prosecution by indictment.

Section 709 provides that no justice shall try any case of assault and battery in which any question arises as to the title to or interest in any real property.

A summary conviction for assault is a bar to a subsequent indictment for a felonious stabbing alleged to have been committed at the same time. R. v. Stanton (1851), 5 Cox C. C., 324; R. v. Miles (1890), 24 Q. B D., 423.

But a summary conviction for assault is not a bar to a subsequent indictment for manslaughter, where the person who was assaulted has afterwards died as a result of the assault. R. v. Morris (1867), 1 C. C. R., 90.

A city stipendiary magistrate holding a summary trial under Code sec. 777 may impose imprisonment not exceeding one year for common assault, although Code sec. 291 specifies such punishment with the addition of the words "if convicted upon an indictment." R. v. Hawes (1902), 6 C. C. C., 238; R. v. Coolen (1903), 7 C. C. C., 522.

See also R. v. Higgins (1905), 10 C. C. C., 456; Larin v. Boyd (1904), 11 C. C. C., 74; R. v. Brindley (1906), 12 C. C. C., 170.

292. Offence.—Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped, who,—

(a) **Indecent assault on female.**—Indecently assaults any female; or,

(b) **Consent procured by fraud.**—Does anything to any female by her consent which but for such consent would be an indecent assault, if such consent is obtained by false and fraudulent representation as to the nature and quality of the act. 55-56-V., c. 29, s. 259.

As to the evidence of children under fourteen who do not understand the nature of an oath, see section 1003.

If on the trial of a person accused of having committed an indecent assault, the prosecutrix in the course of her cross-examination, denies having had intercourse with a third person named to her, such person cannot be called to contradict her upon this point. R. v. Holmes (1871), 1 C. C. R., 334.

But if, in such cross-examination, the prosecutrix denies having had previous intercourse with the accused, evidence may subsequently be given to contradict her regarding that statement. R. v. Riley (1887), 18 Q. B. D., 481.

Upon a charge of rape, statements made by the complainant to a police officer on the day after the offence was alleged to have been committed and in response to his inquiries, the complainant having on the day of the offence complained to others of an assault but not of rape, are not admissible in evidence either as part of the *res gestae* or as in corroboration.

If on an indictment for rape the jury acquit the accused of that offence but find him guilty of indecent assault, the verdict should stand notwithstanding the improper admission in evidence of statements so made by the complainant after the alleged offence, if the other evidence in the case is ample to warrant the verdict of indecent assault. R. v. Graham (1899), 3 C. C. C., 22.

Evidence may be given of a complaint of indecent assault, if such

complaint be made on the same day as the attempt was committed. R. v. Lillyman (1896), 2 Q. B. D., 167.

See also R. v. Rush (1896), 60 J. P., 777; Hopkinson v. Perdue (1904), 8 C. C. C., 286; R. v. Charles Smith (1905), 9 C. C. C., 21; R. v. Barron (1905), 9 C. C. C., 196.

The public may be excluded from the court-room, section 645.

293. Indecent assault on males.—Every one is guilty of an indictable offence and liable to ten years' imprisonment, and to be whipped, who assaults any person with intent to commit sodomy or who, being a male, indecently assaults any other male person. 55-56 V., c. 29, s. 260; 56 V., c. 32, s. 1.

Although a minor under fourteen years cannot be convicted of sodomy, he may if the act be committed against the will of the other party be punished for an assault under section 293. R. v. Hartlen (1898), 2 C. C. C., 12.

As to exclusion of the public from the court-room, see section 645.

294. Consent of child under fourteen no defence.—It is no defence to a charge or indictment for any indecent assault on a young person under the age of fourteen years to prove that he or she consented to the act of indecency. 55-56 V., c. 29, s. 261.

As to proof of age, see Code, section 984.

295. Assault with bodily harm.—Every one who commits any assault which occasions actual bodily harm is guilty of an indictable offence and liable to three years' imprisonment. 55-56 V., c. 29, s. 262.

A conviction upon a charge of assault occasioning bodily harm tried summarily by a magistrate with the consent of the accused and the undergoing of the punishment imposed do not constitute a bar to a civil action for damages for the assault. Nevills v. Ballard (1897) 1 C. C. C., 434.

See also Miller v. Lea (1898), 2 C. C. C., 282; Flick v. Brisbin (1895), 26 O. R., 423; Hardigan v. Graham (1897), 1 C. C. C., 437; Larin v. Boyd (1904), 11 C. C. C., 74.

In a prosecution for an assault occasioning actual bodily harm, it is improper to exclude evidence of statements sworn to by a witness for the prosecution at a preliminary inquiry, the record of the depositions upon which had been lost, as to what was said by the accused at the time of the assault, as such statements of the witness had reference to statements of the accused forming a part of the *res gestae*. R. v. Troop (1908), 2 C. C. C., 22.

296. Aggravated assault.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(a) assaults any person with intent to commit any indictable offence; or,

(b) assaults any public or peace officer engaged in the execution of his duty, or any person acting in aid of such officer; or,

(c) assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself, or of any other person, for any offence; or,

(d) assaults any person in the lawful execution of any process against any lands or goods, or in making any lawful distress or seizure, or with intent to rescue any goods taken under such process, distress or seizure; or,

(e) on any day whereon any poll for an election, parliamentary or municipal, is being proceeded with, within the distance of two miles from the place where such poll is taken or held, assaults or beats any person. 55-56 V., c. 29, s. 263; 57-58 V., c. 57, s. 1.

The fact that the accused did not know that the person assaulted was a peace officer, or that he was acting in the execution of his duty will not prevent a conviction hereunder. R. v. Forbes (1865), 10 Cox C. C., 362.

A person accused of having committed an offence under this section may, by virtue of section 1035, be punished hereunder by the imposition of a fine, as well as by imprisonment for the same offence. Ex parte McClements (1895), 32 C. L. J., 39.

297. Kidnapping.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority,—

(a) **Intent.**—Kidnaps any other person with intent

(i) **To imprison.**—To cause such other person to be secretly confined or imprisoned in Canada against his will, or

(ii) **To be transported.**—To cause such other person to be unlawfully sent or transported out of Canada against his will, or

(iii) **To be enslaved.**—To cause such other person to be sold or captured as a slave, or in any way held to service against his will: or,

(b) **Forcible confinement.**—Forcibly seizes or confines or imprisons any other person within Canada.

2. **Non-resistance.**—Upon the trial of any offence under this section the non resistance of a person so unlawfully kidnapped or confined shall not be a defence unless it appears that it was not caused by threats, duress or force, or exhibition of force. 63-64 V., c. 46, s. 3.

Kidnapping is an aggravated species of false imprisonment, the latter offence being always included in the former. 2 Bishop Cr. Law, 671.

The crime of false imprisonment is a species of aggravated assault. 2 Bishop Crim. Law, 668.

Although it is not necessary that a man's person should be touched. Bird v. Jones (1845), 7 Q. B., 742.

Detention of a prisoner after expiry of his sentence is false imprisonment. Migotti v. Colville (1869), 4 C. & P. D., 233.

UNLAWFUL CARNAL KNOWLEDGE.

298. Rape defined.—Rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by false and fraudulent representations as to the nature and quality of the act.

2. **Age.**—No one under the age of fourteen years can commit this offence. 55-56 V., c. 29, s. 266.

The words "man and woman" in this section are to be taken in a general or generic sense as indicating all males and females of the human race, and not in a restricted sense as distinguished from boys and girls. R. v. Riopel (1898), 2 C. C. C., 225.

An indictment for rape under this section lies against one, who has ravished a female under the age of fourteen years against her will, notwithstanding the provisions of section 301, which enacts that every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife. R. v. Riopel, supra.

An indictment for rape includes the lesser charge of assault, and a verdict thereon of guilty of common assault is properly followed by a conviction, although the information was not laid within six months after the offence was committed. R. v. Edwards (1898), 29 O. R., 451.

Upon a charge of rape, statements made by the complainant to a police officer on the day after the offence was alleged to have been committed, and in response to his inquiries, the complainant having on the day of the offence complained to others of an assault, but not of rape, are not admissible in evidence, either as part of the *res gestae* or as in corroboration. R. v. Graham (1899), 3 C. C. C., 22.

See also R. v. Rush (1896), 60 J. P., 777; R. v. Ingrey (1900), 64 J. P., 106.

But if the complaint was made within what is, under the circumstances of the case, a short time after the alleged indecent assault was committed, evidence of the same will be admissible. In this case it was admitted where the complaint was made upon the same day as the assault. R. v. Lillyman (1896), 2 Q. B. D., 167.

If, on an indictment for rape, the jury acquit the accused of that offence, but find him guilty of indecent assault, the verdict should stand, notwithstanding the improper admission in evidence of statements made by the complainant after the alleged offence, if the other evidence is ample to warrant the verdict of indecent assault. R. v. Graham (1899), 3 C. C. C., 22.

Upon the trial of a charge of rape, the whole statement made by the woman by way of complaint shortly after the alleged offence, including the name of the party complained against and the other details of the complaint, is admissible in evidence as proof of the consistency of her conduct and as confirmatory of her testimony regarding the offence, but not as independent or substantive evidence to prove the truth of the charge. R. v. Riendeau (1900), 3 C. C. C., 293.

Whether or not the complaint was made within a time sufficiently short after the commission of the offence as to admit evidence of the particulars of the complaint, is a question to be decided by the court under the circumstances of the particular case; but it is nevertheless the

province of the jury to take into consideration the time which intervened, in weighing the probability of its truth. R. v. Riendeau, supra.

The lapse of seven days between the date of the offence and the time of making complaint thereof was held insufficient under the circumstances to exclude testimony of the particulars of the complaint. R. v. Riendeau, supra.

Proof on behalf of the defence that the injured party or her parents had instituted civil proceedings to recover damages arising from the commission of the alleged rape is properly excluded upon the criminal trial as irrelevant, unless other facts have been disclosed in evidence which tend to show an intent to thereby wrongfully extort money from the accused. R. v. Riendeau, supra.

On a charge of rape, evidence is admissible on behalf of the defence to contradict a statement of the complainant, made on her cross-examination, denying that, on an occasion when she met the accused subsequent to the alleged rape, she had refused to put an end to the interview, as requested by her mother, and had struck her mother for the latter's interference. R. v. Riendeau (1901), 4 C. C. C., 421.

As to rape in which the consent of the woman has been extorted by threats or fear of bodily harm, see R. v. Jones (1861) 4 L. T., N. S., 154.

As to consent obtained by personating the woman's husband, see R. v. Dee (1884), 15 Cox C. C., 579.

As to consent obtained by "false and fraudulent representations as to the nature and quality of the act," see R. v. Flattery (1877), 2 Q. B. D., 410.

A person accused of having committed the offence of rape may, upon his trial, bring forward evidence to prove the bad character of the prosecutrix, or to prove that she has previously, and of her own free will, had connection with the accused. R. v. Riley (1887), 18 Q. B. D., 481.

The prosecutrix may be asked whether previously to the commission of the alleged offence the prisoner did not have intercourse with her with her own consent. R. v. Martin (1834), 6 Car. & P., 562.

And if the prosecutrix denies having had such connection, evidence may be adduced to contradict her. R. v. Riley, supra.

But the accused cannot adduce evidence to prove that the prosecutrix before the commission of the alleged offence had connection with other persons, nor is the latter obliged to answer such a question on cross-examination. R. v. Hodgson (1812), R. & R., 211.

The prosecutrix may on cross-examination be asked whether she had not allowed a man other than the accused to take liberties with her in the interval between the commission of the alleged offence and the first complaint made of it. R. v. Mercer (1842), 6 Jurist, 243.

If the prosecutrix answers a question as to whether, previous to the alleged offence, she had had connection with a person named, her answer is final, and evidence cannot be adduced to contradict her if she replies in the negative. R. v. Holmes (1871), 12 Cox C. C., 137.

See also R. v. Robins (1843), 1 Cox C. C., 55; R. v. Laliberte (1877), 1 S. C. R., 117.

299. Punishment for rape.—Every one who commits rape is guilty of an indictable offence and liable to suffer death or to imprisonment for life. 55-56 V., c. 29, s. 267.

See R. v. Bedore (1891), 21 O. R., 189; R. v. Fick (1866), 16 U. C. C. P., 379; R. v. Edwards (1898), 2 C. C. C., 96.

The public may be excluded from the court-room, sec. 645.

300. Punishment for attempt.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts to commit rape. 55-56 V., c. 29, s. 268.

If a man has or attempts to have connection with a woman while she is asleep, it is no defence that she did not resist as she is then incapable of resisting. The man can therefore be found guilty of a rape or of an attempt to commit a rape as the case may be. R. v. Mayers (1872), 12 Cox C. C., 311.

An assault with intent to commit rape is also a substantive offence under sec. 296, and is the form in which a charge of attempt to commit rape is usually made. R. v. Riley (1887), 16 Cox C. C., 191.

After a commitment upon a charge of "unlawful assault with intent to carnally know," the accused cannot insist upon a trial without a jury under the Speedy Trials clauses, if the Crown express an intention of indicting him for an attempt to commit rape, which latter offence is beyond the jurisdiction of a county judge's criminal court and is disclosed on the depositions returned. R. v. Preston (1905), 9 C. C. C., 201.

As to exclusion of public from court-room, see section 645.

301. Carnally knowing girl under fourteen years.—Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife, whether he believes her to be of or above that age or not. 55-56 V., c. 29, s. 269.

The offence of carnal knowledge of a girl under fourteen years includes the offence of indecent assault, and a trial for the greater offence is a trial also for the lesser offence included therein, and the accused may, although found not guilty of the greater offence, be convicted for such lesser offence, if proved, under the same charge or indictment. R. v. Cameron (1901), 4 C. C. C., 385.

An indictment for rape lies against one who has ravished a female under the age of fourteen years against her will, notwithstanding this section. R. v. Riopel (1898), 2 C. C. C., 225.

The words "not being his wife" in Code sec. 301, providing for the offence of defiling children under fourteen, is an exception, the failure to negative which in the indictment will not invalidate a conviction thereon where no objection was taken before pleading. R. v. Wright (1906), 11 C. C. C., 221.

The public may be excluded from the court-room, sec. 645.

As to the evidence of children under fourteen who do not understand the nature of an oath, seee sec. 1003.

302. Attempt.—Every one who attempts to have unlawful carnal knowledge of any girl under the age of fourteen years is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped. 55-56 V., c. 29, s. 270.

A county court in New Brunswick, which is not a Court of Oyer and Terminer and General Gaol Delivery, has jurisdiction to try a person accused of having committed an offence under this section, although the evidence discloses the offence of attempting to commit rape, as to which such court has no jurisdiction. R. v. Wright (1896), 34 N. B. R., 127.

As to the evidence, see section 1003 and R. v. De Wolfe (1904) 9 C. C. C., 38.

The public may be excluded from the court-room, section 645.

ABORTION.

303. Attempt to procure.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any drug or other noxious thing, or unlawfully uses on her any instrument or other means whatsoever with the like intent. 55-56 V., c. 29, s. 272.

Where the instrument alleged to have been used was a quill, which might possibly have been used for an innocent purpose, evidence was allowed to be given, in order to prove the intent, that the prisoner had at other times caused mis-carriages by similar means. R. v. Dale (1889), 16 Cox C. C., 703.

The thing administered must be either a "drug" or a "noxious thing," and it is not sufficient that the accused supposed it would have the desired effect. R. v. Hollis (1873), 12 Cox C. C., 463.

If the article administered is not a "drug" and the quantity administered is innoxious, but would be innoxious had it been taken in large quantities, there is no administration of a noxious thing within this section. R. v. Hennah (1877), 13 Cox C. C., 547.

If the drug administered produces mis-carriage, it is sufficient evidence that it is noxious although there is no other evidence of its nature. R. v. Hollis (1873), 12 Cox C. C., 463.

The public may be excluded from the court-room, sec. 645.

304. Woman attempting to procure her own miscarriage.—Every woman is guilty of an indictable offence and liable to seven years' imprisonment who, whether with child or not, unlawfully administers to herself or permits to be administered to her any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever with intent to procure miscarriage. 55-56 V., c. 29, s. 273.

See notes to preceding section.

305. Supplying drug to procure.—Every one is guilty of an indictable offence and liable to two years' imprisonment who unlawfully supplies or procures any drug or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child. 55-56 V., c. 29, s. 274.

Even if the intention so to use the same exists only in the mind of the accused, and is not entertained by the woman whose mis-carriage it

is intended to procure, there is a complete offence. R. v. Hillman (1863). Cox C. C., 386.

"A noxious thing."—A small quantity of savin not sufficient to do more than produce some disturbance in the stomach is not a noxious thing. R. v. Perry (1847), 2 Cox C. C., 223.

The thing supplied must be noxious; and if it is in fact innoxious the intention of the person supplying it is not sufficient to constitute the offence dealt with in these sections. R. v. Isaacs (1862), 9 Cox C. C., 228; R. v. Hennah (1877), 13 Cox C. C., 547; R. v. Hollis (1873), 12 Cox C. C. 463; R. v. Cramp (1880), 14 Cox C. C., 401.

"Causing to be taken".—If A. procures a noxious thing and delivers it to B., both A. and B. intending that B. should take it for the purpose of procuring abortion and B. afterwards takes it with that intent in the absence of A., A. will be convicted of causing it to be taken. R. v. Wilson (1856), 7 Cox C. C., 190.

See also R. v. Farrow (1857), Dearsley & B., C. C. 164.

A woman who, believing herself to be with child, but not in reality being with child, conspires with other persons to administer drugs to herself or to use instruments on herself, with intent to procure abortion, is liable to be convicted of a conspiracy to procure abortion. R. v. Whitechurch (1890), 16 Cox C. C., 743.

The public may be excluded from the court-room, sec. 645.

306. Killing unborn child.—Every one is guilty of an indictable offence and liable to imprisonment for life who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such child had been born.

2. **Saving.**—No one is guilty of any offence who, by means which he in good faith considers necessary for the preservation of the life of the mother of the child, causes the death of any such child before or during its birth. 55-56 V., c. 29, s. 271.

As to when a child become a human being, see sec. 251.

OFFENCES AGAINST CONJUGAL RIGHTS.

307. Bigamy defined.—Bigamy is,—

(a) the act of a person who, being married, goes through a form of marriage with any other person in any part of the world; or,

(b) the act of a person who goes through a form of marriage in any part of the world with any person whom he or she knows to be married; or,

(c) the act of a person who goes through a form of marriage with more than one person simultaneously, or on the same day.

2. **Incompetency no defence.**—The fact that the parties would, if unmarried, have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy.

3. **Excuses.**—No one commits bigamy by going through a form of marriage,—

(a) if he or she in good faith and on reasonable grounds believes his wife or her husband to be dead; or,

(b) if his wife or her husband has been continually absent for seven years then last past and he or she is not proved to have known that his wife or her husband was alive at any time during those seven years; or,

(c) if he or she has been divorced from the bond of the first marriage; or,

(d) if the former marriage has been declared void by a court of competent jurisdiction.

4. **Bigamous marriages outside of Canada.**—No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

5. **Effect of form.**—Every form of marriage shall for the purpose of this section be valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form. 55-56 V., c. 29, s. 275.

On a special case referred to it by the Governor General in Council in 1897, the Supreme Court of Canada held that secs. 275 and 276 (now secs. 307 and 308) were intra vires of the Parliament of Canada, and that that legislative body had jurisdiction to constitute the leaving of Canada by a British subject domiciled therein, with the intent to perform elsewhere a certain prohibited act, followed by the actual performance of that act, an indictable offence. See re Bigamy sections, 1 C. C. C., 172.

It is to be observed, however, that this case was not argued at the bar, the Crown alone being represented by counsel. Nor was the opinion of the court unanimous, the Chief Justice, Sir Henry Strong, who dissented, adopting the judgment of the Queen's Bench Division of the High Court of Justice for Ontario in the case of R. v. Plowman (1894), 25 O. R., 656 This decision pronounced paragraphs (a) and (b) of s.s. 1 of sec. 275 (now sec. 307) to be taken by themselves *ultra vires* of the Parliament of Canada, and void; and it was also held that they were not validated by any thing contained in s.s. 4 of the same section.

In R. v. Brierly (1887), 14 O. R., 525 (which was decided before R. v. Plowman), the Chancery Division of the High Court of Justice for Ontario held that these sections were *intra vires* of the Parliament of Canada.

See also MacLeod vs. Attorney General for New South Wales (1891), A. C., 455; R. v. McQuiggan (1852), 2 L. C. R., 340; R. v. Turner (1862), 9 Cox C. C., 145; R. v. Horton (1871), 11 Cox C. C., 670; R. v. Pierce (1887), 13 O. R., 226.

As to foreign divorce, see R. v. Woods (1903), 7 C. C. C., 226; Stevens v Fisk, Cassels S. C. Digest, 235; LeMesurier v. LeMesurier (1895), A. C., 517.

Mens rea is an essential ingredient of the offence of bigamy. R. v. Sellars (1905), 9 C. C. C., 153.

308. Punishment of bigamy.—Every one who commits

bigamy is guilty of an indictable offence and liable to seven years' imprisonment.

2. **Second offences.**—Every one who commits this offence after a previous conviction for a like offence shall be liable to fourteen years' imprisonment. 55-56 V., c. 29, s. 276.

As to indictment, see R. v. Murray (1845), 7 Q. B., 700; R. v. Apley (1844), 1 Cox C. C., 71.

309. Feigned marriages.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who procures a feigned or pretended marriage between himself and any woman, or who knowingly aids and assists in procuring such feigned or pretended marriage. 55-56 V., c. 29, s. 277.

Section 1002 provides that no person accused of an offence under this section shall be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused.

310. Polygamy.—Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for five years, and to a fine of five hundred dollars,—

(a) **Practising or contracting.**—Who practises, or, by the rites, ceremonies, forms, rules, or customs of any denomination, sect or society, religious or secular, or by any form of contract, or by mere mutual consent, or by any other method whatsoever, and whether in a manner recognized by law as a binding form of marriage or not, agrees or consents to practise or enter into

(i) **Polygamy.**—Any form of polgamy.

(ii) **Conjugal union.**—Any kind of conjugal union with more than one person at the same time, or

(iii) **Spiritual marriages.**—What among the persons commonly called Mormons is known as spiritual or plural marriage; or,

(b) **Cohabitation in conjugal union.**—Who lives, cohabits, or agrees or consents to live or cohabit in any kind of conjugal union with a person who is married to another or with a person who lives or cohabits with another or others in any kind of conjugal union; or,

(c) **Celebrating rite.**—Celebrates, is a party to, or assists in any rite or ceremony which purports to make binding or to sanction any of the sexual relationships mentioned in paragraph (a) of this section; or,

(d) **Assisting in compliance.**—Procures, enforces, enables, is a party to, or assists in the compliance with, or carrying out of, any form, rule or custom which so purports; or,

(e) **Procuring contract.**—Procures, enforces, enables, is a

party to, or assists in the execution of, any form of contract which so purports, or the giving of any consent which so purports. 63-64 V., c. 46, s. 3.

An Indian who according to the marriage customs of his tribe takes two women at the same time as his wives, and cohabits with them, is guilty of an offence under this section. R. v. Bear's Shin Bone (1899), 3 C. C. C., 329.

The mere cohabitation between a man and a woman, each of whom is married to another, is not in itself an offence under this section. In order to bring the act within this section there must be "some form of contract between the parties which they might suppose to be binding on them, but which the law was intended to prohibit;" and the term "conjugal union," as used throughout the section, refers to a form of ceremony purporting to join the parties, that is, a marriage of some sort before cohabiting with one another. R. v. Labrie (1891), M. L. R., 7 Q. B., 211.

See also R. v. Liston (1893), 34 C. L. J., 546; R. v. Harris (1906), 11 C. C. C., 254.

UNLAWFUL SOLEMNIZATION OF MARRIAGE.

311. Penalty.—Every one is guilty of an indictable offence and liable to a fine, or to two years' imprisonment, or to both, who,—

(a) **Without authority.**—Without lawful authority, the proof of which shall lie on him, solemnizes or pretends to solemnize any marriage; or,

(b) **Procuring unlawful marriage.**—Procures any person to solemnize any marriage knowing that such person is not lawfully authorized to solemnize such marriage, or knowingly aids or abets such person in performing such ceremony. 55-56 V., c. 29, s. 279.

Section 1140 provides that no prosecution for this offence shall be commenced after the expiration of two years from its commission. See R. v. Dickout (1893), 24 O. R., 250.

312. Marriage contrary to law.—Every one is guilty of an indictable offence and liable to a fine, or to one year's imprisonment, who, being lawfully authorized, knowingly and wilfully solemnizes any marriage in violation of the laws of the province in which the marriage is solemnized. 55-56 V., c. 29, s. 280.

ABDUCTION.

313. Abduction of a woman.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to marry or carnally know any woman, whether married or not, or with intent to cause any woman to be married or carnally known by any other person, takes away or de-

tains any woman of any age against her will. 55-56 V., c. 29. s. 281.

The intent may be shewn by the declarations or acts of the defendant or from other circumstances from which the intent may be inferred. R. v. Barratt (1840), 9 C. & P., 387.

If the woman be taken away and married with her consent obtained by fraud, the case may be within the statute for she cannot while under the influence of fraud be considered a free agent. R. v. Wakefield (1827), 2 Lewin 279.

314. —Offence.—Penalty.—Intent.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to marry or carnally know any woman, or with intent to cause any woman to be married or carnally known by any person,—

(a) **Abduction of heiress.**—From motives of lucre takes away or detains against her will any woman of any age who has any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or who is a presumptive heiress or co-heiress or presumptive next of kin to any one having such interest; or,

(b) **Alluring away against will of parent.**—Fraudulently allures, takes away or detains any woman, being under the age of twenty-one years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her.

2. **Effect of conviction on property.**—Every one convicted of any offence defined in this section is incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she has any interest, or which comes to her as such heiress, co-heiress or next of kin; and if any such marriage takes place such property shall, upon such conviction, be settled in such manner as any court of competent jurisdiction, upon any information at the instance of the Attorney general, appoints. 55-56 V., c. 29, s. 282.

See R. v. Barratt, cited under preceding section.

Upon an indictment under parag. (b) of s.s. 1 of this section, it is not necessarily incumbent upon the prosecution to prove that the accused knew that the person abducted was an heiress. R. v. Kaylor (1881), 1 Dorion Q. B., 364.

315. Abduction of girl under sixteen.—Every one is guilty of an indictable offence and liable to five years' imprisonment who unlawfully takes or causes to be taken any unmarried girl, who is under the age of sixteen years, out of the possession

and against the will of her father or mother, or of any other person having the lawful care or charge of her.

2. **Consent immaterial.**—It is immaterial whether the girl is taken with her own consent or at her own suggestion or not.

3. **Belief of offender.**—It is immaterial whether or not the offender believed the girl to be of or above the age of sixteen. 55-56 V., c. 29, s. 283.

To constitute the crime of abducting a girl out of the possession and against the will of her father under this section, there must be an actual or constructive possession in the father at the time of the taking. R. v Blythe (1895), 1 C. C. C., 263.

When the girl who was resident with her father in a foreign country left without his consent and with intent to renounce his protecttion, and came to Canada, the father's possession ceased, and *semble*, a possession *de jure* afterwards established by his following her to the place of flight is not the possession contemplated by this section. R. v. Blythe, supra.

If the persuasion to leave and to remain away operated wholly in the foreign country, there is no jurisdiction to convict in Canada, as persuasion is a necessary element in such cases of abduction. R. v. Blythe, supra.

Where a girl under sixteen, having by persuasion been induced by the accused to leave her fathter's house, and to go away with him without her father's consent, left her home alone by a preconcerted arrangement between them, and went to an appointed place where she was met by the accused, and from which place they went away together some distance not intending to return, it was held that there was a taking of the girl out of her father's possession; and that to constitute the "taking" contemplated by the statute which created the offence, it was not necessary that any force, either actual or constructive, should be used. R. v. Mankletow (1853), 6 Cox C. C., 143.

A girl under sixteen, who was living in her father's house, was induced by the accused to go to a chaplain, to be married to the former. She was away from her home only a few hours, and after her return continued to live with her father as before, he being ignorant of what had taken place. The marriage was never consummated. It was held that there was sufficient evidence of her being taken out of her father's possession to constitute the crime. R. v. Baillie (1859), 8 Cox C. C., 38.

Where a man induces a girl under sixteen by promises of what he will do for her to leave her father's house and live with him, he may be convicted of this offence, although he is not actually present or assisting her at the time she leaves. If, however, the going away was entirely voluntary on the girl's part, there can be no conviction under this section. R. v. Robb (1864), 4 F. & F., 59.

Where the prisoners found the girl in the street by herself and invited her to go with them and one of them kept her in an empty house with him all night and had intercourse witht her, and there was no evidence as to the purpose for which the girl had left home, an acquittal was directed upon the ground that the girl was not taken out of the possession of anyone. R. v. Green (1862), 3 F. & F., 274.

See also R. v. Hibbert (1869), 11 Cox C. C., 246; R. v. Timmins (1860), 8 Cox C. C., 401.

Where a girl left her father without any persuasion, inducement or blandishment held out to her by the defendant, so that she had got fairly away from home and then went to the defendant, it may be his moral duty to return her to her father's custody, yet his not doing so is no infringement of this section. R. v. Olifier (1866), 10 Cox C. C., 402.

In an action under this section, it is not necessary to prove that the accused person knew the girl to be under sixteen, as the burden is on him to ascertain her age. R. v. Mycock (1871), 12 Cox C. C., 28; R. v. Robins (1844), 1 C. & K., 456

A girl who is away from home is still in the custody or possession of her father, if she intends to return to her home. R. v. Mycock, supra.

To take away a natural child, who is under the age mentioned, from her putative father, is equally a breach of this section. R. v. Sweeting (1766), 1 East P. C., 457.

As to the evidence necessary to sustain a conviction for an offence under this section, see R. v. Johnson (1884), 15 Cox C. C., 481.

This offence is distinct from the offence of seduction and a conviction under this section does not preclude a conviction for seduction. R. v. Smith (1890), 19 O. R., 714.

316. Penalty.—Child. Intent.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to deprive any parent or guardian of any child under the age of fourteen years, of the possession of such child or with intent to steal any article about or on the person of such child, unlawfully,—

(a) **Abduction.**—Takes or entices away or detains any child; or

(b) **Harbouring abducted child.**—Receives or harbours any such child, knowing it to have been unlawfully taken, enticed away or detained with intent aforesaid.

2. **Possession in good faith.**—Nothing in this section shall extend to any one who gets possession of any child, claiming in good faith a right to the possession of the child. 63-64 V., c. 46, s. 3.

It is no excuse that the defendant being related to the girl's father and frequently invited to the house, made use of no other seduction than the common blandishments of a lover to induce the girl secretly to elope with and marry him, if it appears that it was against the consent of the father. R. v. Twistleton (1668), 1 Lev. 257.

The child's own father may be guilty of child stealing under this section, if after a divorce by a court of competent jurisdiction and the award thereon of the custody of the child to the mother, the father wilfully removes the child from her custody. R. v. Watts (1902), 5 C. C. C., 246; Re Lorenz (1905), 9 C. C. C., 158.

DEFAMATORY LIBEL.

317. Definition.—A defamatory libel is matter published, without legal justification or excuse, likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or designed to insult the person of or concerning whom it is published.

2. **Manner of expressing.**—Such matter may be expressed either in words legibly marked upon any substance whatever, or by any object signifying such matter otherwise than by words,

and may be expressed either directly or by insinuation or irony. 55-56 V., c. 29, s. 285; 63-64 V., c. 46, s. 3.

A plea of justification to an indictment for defamatory libel must allege that the defamatory matter published is true and that it was for the public benefit that the alleged libel was published.

Such plea must set forth concisely the particular facts by reason of which its publication was for the public good, but it must not contain the evidence by which it is proposed to prove such facts, nor any statements purely of comment or argument. R. v. Grenier (1897), 1 C. C. C., 55.

The accused may plead not guilty, and he may then show that the alleged libel was a fair comment upon a matter of public interest, or that the occasion of the publication was privileged, or may set up any other defence admitted by law, except that of the truth of the alleged libel. Odgers on Libel, 3rd ed., p. 330.

An indictment charging the publication of a defamatory libel, which does not state that the same was likely to injure the reputation of the libelled person by exposing him to hatred, contempt or ridicule, or was designed to insult him, is bad by reason of the omission of an essential ingredient of the offence; such an indictment cannot be amended and must be set aside and quashed as the defect is a matter of substance. R. v. Cameron (1898), 2 C. C. C., 173.

The criminal redress for libel is, in some respects, more extensive than the civil one; and the libel may be indictable, although it is not actionable. Odgers on Libel, 3rd ed., p. 444.

See also R. v. Topham (1791), 4 T. R., 126; R. v. Gathercole (1838), 2 Lewin C. C., 237.

As illustrating how a defamatory libel may be published otherwise than by words, see R. v. Garlick, 42 J. P., 68.

Du Bost v. Beresford (1810), 2 Campbell 511.

318. Publishing defined.—Publishing a libel is exhibiting it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen by the person defamed or by any other person. 55-56 V., c. 29, s. 286.

At common law, also, there was sufficient publication of a criminal libel if it was shewn only to the person referred to therein, provided that its nature was such as to be likely to cause him to break the peace. Odgers on Libel, 3rd ed., p. 455; R. v. Brooke (1856), 7 Cox C. C., 251.

So far as the law is concerned, a libel is *prima facie* deemed to be published so soon as the manuscript containing the same has passed out of the possession and control of the person responsible therefor. R. v. Burdett (1820), 4 B. & Ald., 143; R. v. Lovett (1839), 9 C. & P., 462.

319. Publishing upon invitation.—No one commits an offence by publishing defamatory matter on the invitation or challenge of the person defamed thereby, nor if it is necessary to publish such defamatory matter in order to refute some other defamatory statement published by that person concerning the alleged offender, if such defamatory matter is believed to be true, and is relevant to the invitation, challenge or required refutation, and the publishing does not in manner or extent exceed what is reasonably sufficient for the occasion. 55-56 V., c. 29, s. 287.

Publication on invitation or challenge:—Smith v. Wood (1812), 3 Campbell, 322; Weatherston v Hawkins (1786), 1 T. R., 110; Whitely v. Adams (1863), 15 C. B. (N. S.), 392; Force v. Warren (1864), 15 C. B. (N. S.), 806.

Publication in refutation:—Laughton v. Bishop of Sodor and Man (1872), L. R., 4 P. C., 495; Dwyer v. Esmonde (1878), 2 L. R. (I. R.), 243; Koenig v. Ritchie (1862), 3 F. & F., 413; R. v. Veley (1867), 4 F. & F., 1117; Huntley v. Ward (1859), 6 C. B. (N.S.), 514; Kelly v. Sherlock, L. R., 1 Q. B., 698; Odgers on Libel, 233.

320. Publishing proceedings of courts of justice.—No one commits an offence by publishing any defamatory matter, in any proceeding held before or under the authority of any court exercising judicial authority, or in any inquiry made under the authority of any statute or by order of His Majesty, or of any of the departments of government, Dominion or provincial. 55-56 V., c. 29, s. 288.

See Stockdale v. Hansard, 9 A. & E., 1; Stockdale v. Hansard (1837), 11 A. & E., 297.

321. Parliamentary papers.—No one commits an offence by publishing to either the Senate, or House of Commons, or to any Legislative Council, Legislative Assembly or House of Assembly, defamatory matter contained in a petition to the Senate, or House of Commons, or to any such Council or Assembly, or by publishing by order or under the authority of the Senate, or House of Commons, or of any such Council or Assembly, any paper containing defamatory matter or by publishing, in good faith and without ill-will to the person defamed, any extract from or abstract of any such paper. 55-56 V., c. 29, s. 289.

See section 947.

322. Fair reports of proceedings of parliament and courts.—No one commits an offence by publishing in good faith, for the information of the public, a fair report of the proceedings of the Senate or House of Commons, or any committee thereof, or of any Council or Assembly aforesaid, or any committee thereof, or of the public proceedings preliminary or final heard before any court exercising judicial authority, nor by publishing, in good faith, any fair comment upon any such proceedings. 55-56 V., c. 29, s. 290.

All courts of justice, whether of record or not, come within the terms of this section. Lewis v. Levy (1858), 27 L. J., Q. B. D., 282.

As illustrating the gradual development of the law on this subject, see Hoare v. Silverlock (1850), 9 C. B., 23; Usill v. Hales (1878), 3 C. P. D., 319.

The court has power to summarily commit for constructive contempt notwithstanding secs. 322, 323 and 324; but this power will not be exercised when the offence is of a trifling nature, but only when necessary to prevent interference with the course of justice. Stoddart v. Prentice (1898), 5 C. C. C., 103.

A statement in a newspaper editorial to the effect that one of the parties to a pending suit will lose the case, is a contempt of court. Stoddart v. Prentice, supra.

Contempt of court is a criminal proceeding. Ellis v. R. 22 S. C. R., 7.

It is therefore necessary that the charge should be proved with particularity. Re Scaife, 5 B. C. R., 153.

See also: R. v. Joliffe, 4 T. R., 285; R. v. White, 1 Camp., 359; R. v. Ramsay, L. R., 3 P. C., 427; 11 L. C. J., 152; R. v. Charlier (1903), 6 C. C. C., 486.

323. Fair reports of public meetings.—No one commits an offence by publishing in good faith, in a newspaper, a fair report of the proceedings of any public meeting if the meeting is lawfully convened for a lawful purpose and open to the public, and if such report is fair and accurate, and if the publication of the matter complained of is for the public benefit, and if the defendant does not refuse to insert in a conspicuous place in the newspaper in which the report appeared a reasonable letter or document of explanation or contradiction by or on behalf of the prosecutor. 55-56 V., c. 29, s. 291.

324. Public benefit.—No one commits an offence by publishing any defamatory matter which he, on reasonable grounds, believes to be true, and which is relevant to any subject of public interest, the public discussion of which is for the public benefit. 55-56 V. c. 29, s. 292.

As to what are matters of public interest, see Odgers on Libel, 3rd ed., p. 46.

It is a question for the judge and not for the jury whether a particular topic was or was not of public interest. Weldon v. Johnson (1884), Coleridge, C. J., in Odgers on Libel, 3rd ed., p. 46.

The evidence taken before a Parliamentary Committee on a local gas bill is a matter of public interest. Hedley v. Barlow (1865), 4 F. & F., 224.

All appointments to office made by the government are matters of public interest. Seymour v. Butterworth (1862), 3 F. & F., 372.

Evidence given before a Royal Commission is a matter of public concern, and every one has a perfect right to criticise it. Mulkun v. Ward (1872), L. R. 13 Equity, 619.

See also Campbell v. Spottiswoode (1863), 3 F. & F., 421; Davis v. Duncan (1874), L. L., 9 C. P., 396; Strauss v. Francis (1866), 4 F. & F., 939, 1107; Wilson v. Reed (1860), 2 F. & F., 149; Green v. Chapman (1837), 4 Bingham (N. C.), 92; Duncombe v. Daniell, 8 C. & P., 222; Wisdom v. Brown, 1 Times L. R., 412.

325. Fair comments on public person.—No one commits an offence by publishing fair comments upon the public conduct of a person who takes part in public affairs.

2. **Fair comments on literary or art productions.**—No one commits an offence by publishing fair comments on any published book or other literary production, or on any composition or work of art or performance publicly exhibited, or on any other communication made to the public on any subject, if such comments

are confined to criticism on such book or literary production, composition, work of art, performance or communication. 55-56 V., c. 29, s. 293.

As to what is fair comment, see per Lord Ellenborough in Tabart v. Tipper (1808), 1 Campbell, 350.

See also R. v. White (1808), 1 Campbell 359; Hibbins v. Lee (1864), 4 F. & F., 243; Helsham v. Blackwood (1851), 11 C. B., 111.

326. Publication in good faith seeking redress.—No one commits an offence by publishing defamatory matter for the purpose, in good faith, of seeking remedy or redress for any private or public wrong or grievance from a person who has, or is reasonably believed by the person publishing to have, the right or to be under obligation to remedy or redress such wrong or grievance, if the defamatory matter is believed by the person publishing the same to be true, and is relevant to the remedy or redress sought, and such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion. 55-56 V., c. 29, s. 294.

A person would be liable for defamatory statements thus made if he had no ground whatever for believing that the person to whom they were thus made had the right or was under the obligation to redress the grievance of which he complained, but it would be otherwise if, exercising a reasonable degree of care, he merely made a mistake in the person to whom he applied. Fairman v. Ives (1822), 5 B. & Ald., 642; Harrison v. Bush (1855), 5 E. & B., 344; McIntyre v. McBean (1865), 13 U. C., Q. B., 534.

327. Answer to inquiries—Intent.—Condition.—No one commits an offence by publishing, in answer to inquiries made of him, defamatory matter relating to some subject as to which the person by whom, or on whose behalf, the inquiry is made has, or on reasonable grounds is believed by the person publishing to have, an interest in knowing the truth, if such matter is published for the purpose, in good faith, of giving information in respect thereof to that person, and if such defamatory matter is believed to be true, and is relevant to the inquiries made, and also if such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion. 55-56 V., c. 29, s. 295.

The privilege given by this section only extends to so much of an answer as is really necessary in order to give the reply to the inquiry, and any extraneous irrelevant matter is not protected. Any information given must be strictly in answer to a previous inquiry. Thus, when A. meeting B., whom he knew to be on the point of having some business relations with C., said of his own volition, and before any question was asked. "If you have any thing to do with C., you will live to repent it; he is a most unprincipled man," it was held that this communication was not privileged. Storey v. Challands (1837), 8 C. & P., 234.

But it would have been otherwise had A's statement been in answer to B's inquiry about C., with whom he was contemplating having some business relations.

See also Godson v. Home (1819), 1 B. & B., 7; Beatson v. Skene (1860), 5 H. & N., 838; Cowles v. Potts (1865), 34 L. J., Q. B., 247.

328. Giving information.—Intent.—Condition.—No one commits an offence by publishing to another person defamatory matter for the purpose of giving information to that person with respect to some subject as to which he has, or is, on reasonable grounds, believed to have, such an interest in knowing the truth as to make the conduct of the person giving the information reasonable under the circumstances, if such defamatory matter is relevant to such subject, and is either true, or is made without ill-will to the person defamed, and in the belief, on reasonable grounds, that it is true. 55-56 V., c. 29, s. 296.

A solicitor may, of his own volition, give his clients such information concerning third persons as he may deem it to be to their interest to know. Davis v. Reeves (1855), 5 (I. R.), C. L. R., 79.

See also Todd v. Hawkins (1837), 8 C. & P., 88; Coxhead v. Richards (1846), 2 C. B., 569; Harrison v. Bush (1855), 5 E. & B., 344; Whiteley v. Adams (1863), 15 C. B. (N. S.), 392; Laughton v. Bishop of Sodor and Man (1872), 42 L. J., P. C., 11.

329. Proprietor of newspaper presumed responsible.—Every proprietor of any newspaper is presumed to be criminally responsible for defamatory matter inserted and published therein, but such presumption may be rebutted by proof that the particular defamatory matter was inserted in such newspaper without such proprietor's cognizance, and without negligence on his part.

2. **General authority to managers not negligence unless with intent.**—General authority given to the person actually inserting such defamatory matter to manage or conduct, as editor or otherwise, such newspaper, and to insert therein what he in his discretion thinks fit, shall not be negligence within this section unless it be proved that the proprietor, when originally giving such general authority, meant that it should extend to inserting and publishing defamatory matter, or continued such general authority knowing that it had been exercised by inserting defamatory matter in any number or part of such newspaper.

3. **Selling newspapers.**—No one is guilty of an offence by selling any number or part of such a newspaper, unless he knew either that such number or part contained defamatory matter, or that defamatory matter was habitually contained in such newspaper. 55-56 V., c. 29, s. 297.

For definition of "newspaper," see sec. 2 (s.s. 22).

Section 888 provides that every proprietor, publisher, editor or other person charged with the publication in a newspaper of any defamatory libel, shall be dealt with, indicted, tried and punished in the province in which he resides, or in which such newspaper is printed.

See R. v. Holbrook (1877), L. R., 3 Q. B. D., 60; R. v. Molleur (1905), 12 C. C. C., 8 and 16.

330. Selling books containing defamatory libel.—No one commits an offence by selling any book, magazine, pamphlet or other thing, whether forming part of any periodical or not, although the same contains defamatory matter, if, at the time of such sale, he did not know that such defamatory matter was contained in such book, magazine, pamphlet or other thing.

2.—**Sale by servant.—Master exempt unless authorizing.**—The sale by a servant of any book, magazine, pamphlet or other thing, whether periodical or not, shall not make his employer criminally responsible in respect of defamatory matter contained therein unless it be proved that such employer authorized such sale knowing that such book, magazine, pamphlet or other thing contained defamatory matter, or, in case of a number or part of a periodical, that defamatory matter was habitually contained in such periodical. 55-56 V., c. 29, s. 298.

331. When truth a defence.—It shall be a defence to an indictment or information for a defamatory libel that the publishing of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published, and that the matter itself was true. 55-56 V., c. 29, s. 299.

The mere truth is an answer to a civil action, however maliciously and unnecessarily the words were published; but in a criminal case, the defendant has to prove not only that his assertions are true, but also that it was for the public benefit that they should be published. Odgers on Libel, 438.

To take advantage of this section, it must be pleaded. R. v. Moylan, 19 U. C. Q. B., 521; R. v. Hickson, 3 Legal News, 139; R. v. Laurier, 11 R L., 184.

This section is limited to "defamatory" libels, and does not apply to blasphemous, obscene or seditious words. R. v. Duffy (1848), 7 St. Tr. N. S., 795, 853.

The plea of justification must affirm the truth of all the charges, and not merely that some of them are true or that the defendant believed them, or some of them, to be true. R. v. Moylan (1860), 19 U. C. Q. B., 521; R. v. Newman (1853), 1 E. & B., 568.

See sections 910 and 911 regarding the plea of justification in actions charging defamatory libel.

332. Extortion by libel.—Everyone is guilty of an indictable offence and liable to two years' imprisonment, or to a fine not exceeding six hundred dollars, or to both, who publishes or threatens to publish, or offers to abstain from publishing, or offers to prevent the publishing of, a defamatory libel with intent to exort any money, or to induce any person to confer upon or procure for any person any appointment or office of profit or trust, or in consequence of any person having been refused any such money, appointment or office. 55-56 V., c. 29, s. 300.

333. Punishment of libel known to be false.—Every one is guilty of an indictable offence and liable to two years' imprisonment, or to a fine not exceeding four hundred dollars, or to both, who publishes any defamatory libel knowing the same to be false. 55-56 V., c. 29, s. 301.

Defamatory matter is always presumed to be false, and the burden is upon the defendant to shew that it was true, that it dealt with a matter of public interest, and that its publication was for the public good. R. v. Newman (1853), 1 E. & B., 568.

The law implies malice from the publication, but no allegation of malice need be made in the indictment. R. v. Munslow (1895), 1 Q. B., 758, 762.

An indictment charging the publication of a defamatory libel, which does not state that the same was likely to injure the reputation of the libelled person by exposing him to hatred, contempt or ridicule, or was designed to insult him, is bad by reason of the omission of an essential ingredient of the offence. R. v. Cameron (1898), 2 C. C. C., 173.

Such an indictment cannot be amended and must be set aside and quashed as the defect is a matter of substance. R. v. Cameron, supra.

See also Edsall v. Russell (1842), 4 M. & Gr., 1090; Blake v. Stevens (1864), 4 F. & F., 239; Watkin v. Hall (1868), L. R., 3 Q. B., 396.

Section 1044 provides that if the accused is convicted the Court may order him to pay the whole or any part of the costs of the prosecution.

Section 1045:—"In the case of an indictment or information by a private prosecutor for the publication of a defamatory libel, if judgment is given for the defendant, he shall be entitled to recover from the prosecutor the costs incurred by him by reason of such indictment or information, either by warrant of distress issued out of the said Court, or by action or suit as for an ordinary debt."

334. Punishment of defamatory libel.—Every one is guilty of an indictable offence and liable to one year's imprisonment, or to a fine not exeeding two hundred dollars, or to both, who publishes any defamatory libel. 55-56 V., c. 29, s. 302.

See R. v. Edward Whelan (1863), 1 P. E. I. Rep., 223; R. v. Wilkinson (1877), 41 U. C. Q. B., 1, 25; R. v. Wilson (1878), 43 U. C. Q. B., 583; R. v. Thompson (1874), 24 U. C. C. P., 252.

PART VII.

OFFENCES AGAINST RIGHTS OF PROPERTY AND RIGHTS ARISING OUT OF CONTRACTS, AND OFFENCES CONNECTED WITH TRADE.

Interpretation.

335. Definitions.—In this Part, unless the context otherwise requires,—

(a) **Act.**—For the purposes of the sections relating to offences connected with trade and breaches of contract, includes a default, breach or omission;

(b) '**Admiralty**.'——Means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral;

(c) '**Break**.'—Means to break any part, internal or external, of a building, or to open by any means whatever (including lifting, in the case of things kept in their places by their own weight), any door, window, shutter, cellar-flap or other thing intended to cover openings to a building, or to give passage from one part of it to another;

(d) '**Covering**.'—Includes any stopper, cash, bottle, vessel, box, cover, capsule, case, frame or wrapper; and '**label**' includes any band or ticket;

(e) '**Dwelling-house**.'—Means a permanent building, the whole or any part of which is kept by the owner or occupier for the residence therein of himself, his family or servants, or any of them, although it may at intervals be unoccupied;

(f) '**Document**.'—Means any paper, parchment or other material used for writing or printing, marked with matter capable of being read, but does not include trade marks on articles of commerce, or inscriptions on stone or metal or other like material;

(g) '**Every one,' etc.**—'Vendor,' 'purchaser,' 'merchant,' 'agent' or 'person, for the purposes of the sections relating to trading stamps, includes any partnership, or company, or body corporate;

(h) '**Exchequer bill**.'—Includes exchequer bonds, notes, debentures and other securities issued under the authority of the Parliament of Canada, or under the authority of the legislature of any province forming part of Canada, whether before or after such province so became a part of Canada;

(i) '**Exchequer bill paper**.'—Means any paper provided by the proper authority for the purpose of being used as exchequer bills, exchequer bonds, notes, debentures or other securities issued under the authority of the Parliament of Canada, or under the authority of the legislature of any province forming part of Canada, whether before or after such province became a part of Canada;

(j) '**False document**.'—Means

(i) a document, the whole or some material part of which purports to be made by or on behalf of any person who did not make or authorize the making thereof, or which, though made by, or by the authority of, the person who purports to make it, is falsely dated as to time or place of making, where either is material, or

(ii) a document, the whole or some material part of which

purports to be made by or on behalf of some person who did not in fact exist, or

(iii) a document which is made in the name of an existing person, either by that person or by his authority, with the fraudulent intention that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it;

(k) '**False name or initials**.'—Means, as applied to any goods, any name or initials of a person which

(i) are not a trade mark, or part of a trade mark,

(ii) are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials,

(iii) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods;

(l) '**False trade description**.'—Means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false in a material respect; and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Part;

(m) '**Goods**.'—For the purposes of the sections relating to forgery of trade marks and fraudulent marking of merchandise, means anything which is merchandise or the subject of trade or manufacture;

(n) '**Name**.'—Includes any abbreviation of a name;

(o) '**Person**,' **etc**.—'Manufacturer,' 'dealer' or 'trader' and 'proprietor,' for the purposes of the sections relating to forgery of trade marks and fraudulent marking of merchandise, include any body of persons, corporate or not corporate;

(p) '**Revenue paper**.'—Means any paper provided by the proper authority for the purpose of being used for stamps, licenses or permits, or for any other purpose connected with the public revenue;

(q) **Seaman**.'—Means every person, not being a commissioned, warrant or subordinate officer, who is in or belongs to His Majesty's navy, and is borne on the books of any one of His Majesty's ships in commission, and every person, not being an officer as aforesaid, who, being borne on the books of any hired vessels in His Majesty's service, is by virtue of any Act of Parlia-

ment of the United Kingdom for the time being in force for the discipline of the navy, subject to the provisions of such Act;

(r) '**Seaman's property**.'—Means any clothes, slops, medals, necessaries or articles usually deemed to be necessaries for sailors on board ship, which belong to any seaman;

(s) '**Trade mark**'—Means a trade mark or industrial design registered in accordance with the Trade Mark and Design Act, and the registration whereof is in force under the provisions of the said Act, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of section one hundred and three of the Act of the United Kingdom, known as *The Patents, Designs and Trade Marks Act, 1883*, are, in accordance with the provisions of the said Act, for the time being applicable;

(t) '**Trade description**.'—Means any description, statement or other indication, direct or indirect,

(i) as to the number, quantity, measure, gauge or weight of any goods,

(ii) as to the place or country in which any goods are made or produced,

(iii) as to the mode of manufacturing or producing any goods,

(iv) as to the material of which any goods are composed,

(v) as to any goods being the subject of an existing patent, privilege or copyright;

(u) '**Trading stamps**.'—Includes, besides trading stamps commonly so-called, any form of cash receipt, receipt, coupon, premium ticket or other device, designed or intended to be given to the purchaser of goods by the vendor thereof or his employee or agent, and to represent a discount on the price of such goods or a premium to the purchaser thereof, which is redeemable either

(i) by any person other than the vendor, or the person from whom he purchased the goods, or the manufacturer of the goods, or

(ii) by the vendor, or the person from whom he purchased the goods, or the manufacturer of the goods, in cash or goods not his property, or not his exclusive property, or

(iii) by the vendor elsewhere than in the premises where such goods are purchased;

or which does not show upon its face the place of its delivery and the merchantable value thereof, or is not redeemable at any time;

(v) '**Watch**.'—For the purposes of the next succeeding sec-

tion, means all that portion of a watch which is not the watch case.

2. **An offer not a trading stamp.**—An offer, printed or marked by the manufacturer upon any wrapper, box or receptacle, in which goods are sold, of a premium or reward for the return of such wrapper, box or receptacle, is not a trading stamp within the meaning of this Part. 55-56 V., c. 29, ss. 383, 392, 407, 419, 420, 421, 433, 443, 444 and 519; 4-5 E. VII., c. 9, s. 1.

336. Words or marks on watch cases.—Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no such description, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Part, and the provisions of this Part with respect to goods to which a false description has been applied, and with respect to selling or exposing, or having in possession, for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly. 55-56 V., c. 29, s. 444.

337. Trade description.—The use of any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the matters hereinbefore referred to in the interpretation of the expression 'trade description,' is a trade description within the meaning of this Part. 55-56 V., c. 29, s. 443.

338. False document.—To constitute a false document it is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence. 55-56 V., c. 29, s. 421.

339. Outbuilding when to be part of dwelling house.—A building occupied with, and within the same curtilage with, any dwelling-house shall be deemed to be part of the said dwelling-house if there is between such building and dwelling-house a communication, either immediate or by means of a covered and inclosed passage, leading from the one to the other, but not otherwise. 55-56 V., c. 29, s. 407.

The word "curtilage," as used in this section means a courtyard, enclosure, or piece of land near and belonging to a dwelling-house. Pilbrow v. St. Leonards (1895), L. R., 1 Q. B. D., 33, 433.

340. Entrance into building defined.—An entrance into a building is made as soon as any part of the body of the person

making the entrance, or any part of any instrument used by him, is within the building.

2.—**Entering by artifice or breaking.**—Every one who obtains entrance into any building by any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, shall be deemed to have broken and entered that building. 55-56 V., c. 29, s. 407.

APPLICATION OF PART.

341. As to provisions relating to false trade descriptions.—The provisions of this Part respecting the application of a false trade description to goods extend to the application to goods of any such figures, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

2. **Idem.**—The provisions of this Part respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description. 55-56 V., c. 29, s. 443.

342. Idem.—Proviso.—The provisions of this Part with respect to false trade descriptions do not apply to any trade description which, on the twenty-second day of May, in the year one thousand eight hundred and eighty-eight, was lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, such provisions shall apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there. 55-56 V., c. 29, s. 455.

343. As to trading stamps.—The provision of this Part with respect to trading stamps shall not apply to any trading stamp issued by a manufacturer or vendor before the first day of November, one thousand nine hundred and five. 4-5 E. VII., c. 9, s. 2.

THEFT DEFINED.

344. Things capable of being stolen.—Proviso.—Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it: Provided that nothing growing out of the earth of a value not exceeding twenty-five cents shall, except in cases hereinafter provided, be deemed capable of being stolen. 55-56 V., c. 29, s. 303.

At common law nothing but personal goods could be the subject of larceny. Archbold Cr. Plead. (1900), 406.

Things real or which "savoured of the realty" were excluded, and title deeds could therefore not be the subject of larceny. 1 Hale 510.

There could not be a larceny of a corpse, as it was not the subject of property. R. v. Haynes (1614), 12 Co. Rep., 113.

Water supplied by a water company to a consumer and standing in his pipes, might be the subject of larceny at common law. Ferens v. O'Brien (1883), 11 Q. B. D., 21.

By 57 and 58 Vic., cap. 39 sec. 10, electricity is declared capable of being stolen. This is now section 351.

See also R. v. Foley (1889), 17 Cox C. C., 142; R. v. Townley (1871), L. R., 1 C. C. R., 315.

345. Living creatures capable of being stolen.—All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen: Provided that tame pigeons shall be capable of being stolen so long only as they are in a dovecot or on their owner's land.

2. **Living creatures wild by nature.**—All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in Canada, shall, if kept in a state of confinement, be capable of being stolen, not only while they are so confined but after they have escaped from confinement.

3. **Idem.**—All other living creatures wild by nature shall, if kept in a state of confinement, be capable of being stolen so long as they remain in confinement or are being actually pursued after escaping therefrom, but no longer.

4. **Idem.**—A wild living creature shall be deemed to be in a state of confinement so long as it is in a den, cage or small inclosure, stye or tank, or is otherwise so situated that it cannot escape and that its owner can take possession of it at pleasure.

5. **Idem.**—Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen, nor shall the taking of their dead bodies by, or by the orders of, the person who killed them before they are reduced into actual possession by the owner of the land on which they died, be deemed to be theft.

6. **Parts of living creatures.**—Everything produced by or forming part of any living creature capable of being stolen, shall be capable of being stolen. 55-56 V., c. 29, s. 304.

As to larceny of animals at common law, see R. v. Petch (1878), 14 Cox C. C., 116; R. v. Searing (1818), R. & R., 250; R. v. Cheafor (1851), 2 Den., 361; 4 Bl. Com., 235; 2 Bishop Cr. Law, 683, 684; 2 Russell Cr., 5th ed., 233.

346. Oysters.—Oysters and oyster brood shall be capable of being stolen when in oyster beds, layings, or fisheries which are the property of any person, and sufficiently marked out or known as such property. 55-56 V., c. 29, s. 304.

347. Theft defined.—Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent,—

(a) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest; or,

(b) to pledge the same or deposit it as security; or,

(c) to part with it under a condition as to its return which the person parting with it may be unable to perform; or,

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

2. **Time when theft.**—Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it.

3. **Secrecy.**—The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

4. **Purpose of taking.**—It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting. 55-56 V., c. 29, s. 305.

As to larceny at common law, see 2 East P. C., 553; 1 Hale 513; 4 Bl. Com., 231; R. v. Thurborn (1849), 1 Den., 388; R. v. Holloway (1848), 2 Car. & K., 942.

The article must have been of *some* value, but not necessarily of the value of any coin known to the law. R. v. Morris (1839), 9 C. & P., 349; R. v. Edwards (1877), 13 Cox, 384.

A warrant of commitment for trial on a charge of theft is sufficient if it states that the chattel was stolen from the informant's building, with-

out also stating that the informant owned the chattel. R. v. Leete (1900), 7 C. C. C., 301.

A minor intrusted by his tutor or judicial guardian with chattel property of which he is part owner, who fraudulently converts it to his own use, with intent to deprive his tutor of it, is guilty of theft. Guillet v. R. (1904), 12 C. C. C., 187.

If a part owner of property steals it from A. in whose sole custody it is, and who is solely responsible for its safety *and has to account for it*, he is guilty of larceny. R. v. Webster, Leigh & Cave, C. C. R., 77; R. v. McDonald, 15 Q. B. D., 323.

See also R. v. Simpson (1854), 6 Cox C. C., 422; R. v. Collins (1864), 9 Cox C. C., 497; R. v. Cabbage (1815), R. & R., 292; R. v. Poynton (1862), 32 L. J., M. C., 29; R. v. McElroy (1903), 11 C. C. C., 34.

Theft of lost property:—R. v. Pierce (1852), 6 Cox C. C., 117; R. v. Glyde (1868), L. R., 1 C. C. C., 139; R. v. Shea (1856), 7 Cox C. C., 147; R. v. Moore (1860), 30 L. J., M. C., 77.

Proof of intent:—R. v. Lyon (1898), 2 C. C. C., 242.

Evidence of other similar criminal acts may be relevant in a charge of theft, if it bears upon the question whether the taking was designed or accidental. R. v. Collyns (1898), 4 C. C. C., 572.

Attempt to steal:—R. v. Ring (1892), 17 Cox C. C., 491; R. v. Brown (1890), 24 Q. B. D., 357, overruling R. v. Collins (1864), L. & C., 471.

Re Extradition:—The abandonment of the term "larceny" in Canadian jurisprudence on the enactment of the Criminal Code of Canada subsequent to an extradition convention including such offence, does not affect the liability to extradition of a person charged with what was larceny at common law and is by the Criminal Code still an offence in Canada under the name of "theft" or "stealing." Re Gross (1898), 2 C. C. C., 67.

348. Agent pledging goods not theft when.—No factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise, for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal.

2.—**Servant when not guilty of theft.**—Any servant, contrary to the orders of his master, taking from his possession any food for the purpose of giving the same or having the same given to any horse or other animal belonging to or in the possession of his master, shall not, by reason thereof, be guilty of theft. 55-56 V., c. 29, s. 305.

349. Theft of things seized under process of law.—Every one commits theft and steals the thing taken or carried away who, whether pretending to be the owner or not, secretly or openly, takes or carries away, or causes to be taken or carried away, without lawful authority, any property under lawful seizure and detention by any peace officer or public officer in his official capacity. 63-64 V., c. 46, s. 3.

See R. v. Hollingsworth (1899), 2 C. C. C., 291.

It was held in that case that a guest at a hotel, who, without leave, removed his baggage after the same had been placed "under lawful seizure and detention" by the hotelkeeper in respect of the latter's lien, was guilty under this section, although he was permitted to have access to the room where the baggage was kept.

But this judgment would not hold now, since the amendment of 1900, adding the words "by any peace officer or public officer in his official capacity."

See also R. v. Walker (1896), 32 C. L. J., 300.

The limit of punishment is seven years' imprisonment, or ten years' imprisonment if the guilty person has previously been convicted of theft. Section 386.

350. Killing animals.—Every one commits theft and steals the creature killed who kills any living creature capable of being stolen with intent to steal the carcass, skin, plumage or any part of such creature. 55-56 V., c. 29, s. 307.

As to punishment for this offence, see secs. 369, 370 and 392.
See also sec. 510 (s.s. B., parag. (b))

351. Theft of electricity.—Every one commits theft who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity. 57-58 V., c. 39, s. 10.

352. Theft by owner.—Theft may be committed by the owner of anything capable of being stolen against a person having a special property or interest therein, or by a person having a special property or interest therein against the owner thereof, or by a lessee against his reversioner, or by one of several joint owners, tenants in common, or partners of or in any such thing against the other persons interested therein, or by the directors, public officers or members of a public company, or body corporate, or of an unincorporated body or society associated together for any lawful purpose, against such public company or body corporate or unincorporated body or society. 55-56 V., c. 29, s. 311.

This section would be applicable to the case of a partner defrauding his co-partner. Major v. McCraney (1898), 2 C. C. C., 547, 556.

All agreements to suppress criminal prosecutions are illegal in the absence of any statutory provision to the contrary. Major v. McCraney, supra; Jones v. Merionetshire Permanent (1892), 1 Ch., 173; Leggatt v. Brown (1898), 29 O. R., 530 and 30 O. R., 225.

Theft by co-owner:—Guillet v. R. (1904), 12 C. C. C., 186; R. v. Webster, Leigh & Cave, C. C. R., 77; R. v. McDonald, 15 Q. B. D., 323.

As to punishment, see sec. 386.

353. By defrauding partner in mining claim.—Every one commits theft who, with intent to defraud his co-partner, co-adventurer, joint tenant or tenant in common, in any mining claim, or in any share or interest in any such claim, secretly

keeps back or conceals any gold or silver found in or upon or taken from such claim. 55-56 V., c. 29, s. 312.

Sec. 637 authorizes any justice to whom a complaint in writing has been made, to issue a search warrant for any gold or silver alleged to be unlawfully deposited in any place.

As to punishment, see sec. 378 (two years' imprisonment).

354. Husband and wife.—Theft while living apart.—No husband shall be convicted of stealing during cohabitation, the property of his wife, and no wife shall be convicted of stealing, during cohabitation, the property of her husband; but while they are living apart from each other either shall be guilty of theft if he or she fraudulently takes or converts anything which is, by law, the property of the other in a manner which, in any other person, would amount to theft.

2. **Theft.**—Every one commits theft who, while a husband and wife are living together, knowingly,—

(a) **By assisting spouse.**—Assists either of them in dealing with anything which is the property of the other in a manner which would amount to theft if they were not married; or,

(b) **Receiving property of spouse.**—Receives from either of them anything, the property of the other, obtained from that other by such dealing as aforesaid. 55-56 V., c. 29, s. 313.

At common law there could be no theft between husband and wife, even when they were living apart from each other. But it was a criminal offence for a man living with another man's wife to receive her husband's property from her. R. v. Streeter (1900), 2 Q. B., 601.

355. Theft by person required to account.—Every one commits theft who, having received any money or valuable security or other thing whatsoever, on terms requiring him to account for or pay the same, or the proceeds thereof, or any part of such proceeds, to any other person, though not requiring him to deliver over in specie the identical money, valuable security or other thing received, fraudulently converts the same to his own use, or fraudulently omits to account for or pay the same or any part thereof, or to account for or pay such proceeds or any part thereof, which he was required to account for or pay as aforesaid.

2. **Entry in account.**—If it be part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of such money or proceeds or any part thereof, in such account, shall be a sufficient accounting for the money or proceeds, or part thereof, so entered.

3. **Effect.**—In such case no fraudulent conversion of the amount accounted for shall be deemed to have taken place. 55-56 V., c. 29, s. 308.

Held that the word "terms" in this section means the terms upon which the accused held the money or valuable security when he received it, and that it does not refer to terms imposed by the person paying the money. R. v. Unger (1894), 5 C. C. C., 270; 30 C. L. J., 428.

See also R. v. Hogle (1896), 5 C. C. C., 53; R. v. Wynn (1887), 16 Cox C. C., 231; R. v. De Banks (1884), 13 Q. B. D., 29.

A railway conductor who takes from a passenger for his transportation a sum much less than the authorized fare and issues no ticket or receipt therefor is guilty of theft under this section if he fraudulently omits to account for and pay to the railway company the money so received. R. v. McLellan (1905), 10 C. C. C., 1.

See also R. v. Bastien (1905), 11 C. C. C., 306.

The limit of punishment for this offence is fourteen years' imprisonment, sec 358.

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356. Theft by persons holding power of attorney.—Every one commits theft who, being entrusted, either solely or jointly with any other person, with any power of attorney for the sale, mortgage, pledge or other disposition of any property, real or personal, whether capable of being stolen or not, fraudulently sells, mortgages, pledges or otherwise disposes of the same or any part thereof, or fraudulently converts the proceeds of any sale, mortgage, pledge or other disposition of such property, or any part of such proceeds, to some purpose other than that for which he was entrusted with such power of attorney. 55-56 V., c. 29, s. 309.

See R. v. Fulton (1900), R. J. Q., 10 Q. B., 1; 5 C. C. C., 36.
As to punishment see section 358.

357. Misappropriation of proceeds held under direction.—Every one commits theft who, having received, either solely or jointly with any other person, any money or valuable security or any power of attorney for the sale of any property, real or personal, with a direction that such money, or any part thereof, or the proceeds, or any part of the proceeds of such security, or such property, shall be applied to any purpose or paid to any person specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose or pays to any other person such money or proceeds, or any part thereof.

2. **Direction in writing when necessary.**—When the person receiving such money, security or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor

and creditor account between them, this section shall not apply, unless such direction is in writing. 55-56 V., c. 29, s. 310.

See definition in sec. 2 (s.s., 32). R. v. Bowerman (1891), 1 Q. B., 112. As to punishment see sec. 358.

PUNISHMENT OF THEFT.

358. Penalty under last three sections.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals anything by any act or omission amounting to theft under the provisions of the three last preceding sections. 55-56 V., c. 29, s. 320.

359. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(a) **Theft by clerk.**—Being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals anything belonging to or in the possession of his master or employer; or,

(b) **Theft by cashier.**—Being a cashier, assistant cashier, manager, officer, clerk or servant of any bank, or savings bank, steals any bond, obligation, bill obligatory or of credit, or other bill or note, or any security for money, or any money or effects of such bank, or lodged or deposited with any such bank, or,

(c) **By government employee.**—Being employed in the service of His Majesty, or of the Government of Canada or the government of any province of Canada, or of any municipality, steals anything in his possession by virtue of his employment. 55-56 V., c. 29, s. 319; 57-58 V., c. 57, s. 1.

The word "municipality" is defined by sec. 2 (s.s., 21).

The test as to whether a person is a "clerk or servant," is: was he under the control of and bound to obey his alleged master? It is a question of fact for the jury. R. v. Negus (1873), 12 Cox C. C., 492.

A director of a corporation may also be its clerk or servant and amenable as such to the provisions of this section. R. v. Stuart (1894), 1 Q. B., 310.

See also R. v. Faulkes (1875) 44 L. J., M. C., 65; R. v. Bailey (1871), 12 Cox C. C., 56; R. v. Hall (1875), 13 Cox C. C., 49; R. v. Taylor (1867), 10 Cox C. C., 544; R. v. Tessier (1900), 5 C. C. C., 73; R. v. Glass (1877), 1 L. N., (Montreal), 141.

360. By tenants and lodgers.—Every one who steals any chattel or fixture let to be used by him in or with any house or lodging is guilty of an indictable offence and liable to two years' imprisonment, and, if the value of such chattel or fixture exceeds the sum of twenty-five dollars, to four years' imprisonment. 55-56 V., c. 29, s. 322.

See section 848.

361. Of testamentary instruments.—Every one is guilty of an indictable offence and liable to imprisonment for life who, either during the life of the testator or after his death, steals the whole or any part of a testamentary instrument, whether the same relates to real or personal property, or to both. 55-56 V., c. 29, s. 323.

See definition of "testamentary instrument" in sec. 2 (s.s., 37).
Every one who destroys, cancels, conceals or obliterates any document of title to goods or lands, or any valuable security, testamentary instrument, or judicial, official or other document for any fraudulent purpose, is or judicial, official or other document for any fraudulent purpose, is guilty guilty of an indictable offence and liable to the same punishment, as if he had stolen such document, security, or instrument. Sec. 396.

362. Of documents of title to lands or goods.—Every one is guilty of an indictable offence and liable to three years' imprisonment who steals the whole or any part of any document of title to lands or goods. 55-56 V., c. 29, s. 324.

See definition of "document of title to goods" in sec. 2 (s.s. 11) and of "document of title to lands" in sec. 2 (s.s. 12).
See also note to preceding section.

363. Of judicial or official documents.—Every one is guilty of an indictable offence and liable to three years' imprisonment who steals the whole or any part of any record, writ, return, affirmation, recognizance, *cognovit actionem*, bill, petition, answer, decree, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or of any original document whatsoever of or belonging to any court of justice, or relating to any cause or matter begun, depending or terminated in any such court, or of any original document in any wise relating to the business of any office or employment under His Majesty, and being or remaining in any office appertaining to any court of justice, or in any government or public office. 55-56 V., c. 29, s. 325.

See note to section 361.

364. Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for life, or for any term not less than three years, who steals,—

(a) **Post letters, etc.**—A post letter bag; or,

(b) A post letter from a post letter bag or from any post office, or from any officer or person employed in any business of the post office of Canada, or from a mail; or,

(c) A post letter containing any chattel, money or valuable security; or,

(d) any chattel, money or valuable security from or out of a post letter. 55-56 V., c. 29, s. 326.

When a person accused of having stolen post-letters was induced by a false statement made to him by a detective employed by the prosecution, to the effect that he had been seen taking the letters, to make a confession of having done so, it was held that the confession was inadmissible in evidence against the accused. R. v. MacDonald (1896), 2 C. C. C., 221.

A decoy letter is a post letter. 1 Edward VII, cap. 19, sec. 1.

See R. v. Rathbone (1841), 2 Moody C. C., 242; R. v. Shephard (1856), 25 L. J., M. C., 52; R. v. Trepanier (1901), 4 C. C. C., 259.

365. Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for any term not exceeding seven years, and not less than three years, who steals,—

(a) **Idem.**—Any post letter, other than post letters referred to in the last preceding section;

(b) any parcel sent by parcel post, or any article contained in any such parcel; or,

(c) any key suited to any lock adopted for use by the Post Office Department, and in use on any Canada mail or mail bag. 55-56 V., c. 29, s. 327.

See notes to preceding section.

A decoy letter upon which postage has been paid, written by a post office inspector and delivered by him to the proper sorting officer for distribution, is a "post letter" within the meaning of secs. 364 and 365 of the Cr. Code and of the Post Office Act., as amended by 1 Edw. VII, cap. 19, sec. 1. R. v. Ryan (1905), 9 C. C. C., 347.

366. Stealing mailable matter.—Every one is guilty of an indictable offence and liable to five years' imprisonment who steals any printed vote or proceeding, newspaper, printed paper or book, packet or package of patterns or samples of merchandise or goods, or of seeds, cuttings, bulbs, roots, scions or grafts, or any post card or other mailable matter, other than a post letter, sent by mail. 55-56 V., c. 29, s. 328.

See section 510 (D.)

As to confession, see R. v. MacDonald (1896), 2 C. C. C., 221. See R. v. James (1890), L. R., 24 Q. B. D., 439.

367. Election documents.—Every one is guilty of an indictable offence and liable to a fine in the discretion of the court, or to seven years' imprisonment, or to both fine and imprisonment, who steals, or unlawfully takes from any person having the lawful custody thereof, or from its lawful place of deposit for the time being, any writ of election, or any return to a writ of election, or any indenture, poll-book, voters' list, certificate, affidavit or report, ballot, or any document or paper made, prepared or drawn out according to or for the requirements of any law in

regard to Dominion, provincial, municipal or civic elections. 55-56 V., c. 29, s. 329.

See section 528 as to offences of destroying, injuring or obliterating poll books, voters' lists, etc.

368. Railway tickets.—Every one is guilty of an indictable offence and liable to two years' imprisonment who steals any tramway railway or steamboat ticket, or any order or receipt for a passage on any railway or in any steamboat or other vessel. 55-56 V., c. 29, s. 330.

369. Cattle.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals any cattle. 55-56 V., c. 29, s. 331.

See definition of cattle in sec. 2 (s.s. 5).

Every one commits theft and steals the creature killed who kills any living creature capable of being stolen with intent to steal the carcass, skin, plumage or any part of such creature. Section 350.

Every one is guilty of the indictable offence of mischief who willfully destroys or damages any cattle or the young thereof, and the damage is caused by killing, maiming, poisoning or wounding; and is liable for such offence to fourteen years' imprisonment. Sec. 510 (B).

For attempt to injure cattle, see sec. 536.

As to threats to injure cattle, see sec. 538.

See R. v. Edwards (1823), R. & R., 497; R. v. Holloway (1823), 1 C. & P., 128; R. v. Williams (1825), 1 Moody C. C., 107; R. v. Puckering (1829), 1 Moody C. C., 242; R. v. Brewster (1896), 4 C. C. C., 34; R. v. Pachal (1899), 5 C. C. C., 34.

370. Dogs, birds, beasts and other animals.—Every one who steals any dog, or any bird, beast or other animal ordinarily kept in a state of confinement or for any domestic purpose, or for any lawful purpose of profit or advantage, is, if the value of the property stolen exceeds twenty dollars, guilty of an indictable offence and liable to a penalty not exceeding fifty dollars over and above the value of the property stolen, or to two years' imprisonment, or to both, and if the value of the property stolen does not exceed twenty dollars, is guilty of an offence and liable upon summary conviction to a penalty not exceeding twenty dollars over and above such value, or to one month's imprisonment with hard labour.

2. **Subsequent conviction.**—Every one who, having been previously convicted of an offence under this section, is summarily convicted of another offence thereunder, is liable to three months' imprisonment with hard labour. 63-64 V., c. 46, s. 3.

As to injuries to dogs, birds, etc., see sec. 537.

371. Oysters.—Every one is guilty of an indictable offence

and liable to seven years' imprisonment who steals oysters or oyster brood.

2. **Using dredge or other means to take oysters.**—Every one is guilty of an indictable offence and liable to three months' imprisonment who unlawfully and wilfully uses any dredge or net, instrument or engine whatsoever, for the purpose of taking oysters or oyster brood, within the limits of any oyster bed, laying or fishery the property of any other persons, and sufficiently marked out or known as such, although none are actually taken, or unlawfully and wilfully with any net, instrument or engine, drags upon the ground of any such bed, laying or fishery.

3. **Saving.**—Nothing in this section applies to any person fishing for or catching any swimming fish within the limits of any oyster fishery with any net, instrument or engine adapted for taking swimming fish only. 55-56 V., c. 29, s. 334.

An indictment under this section shall be deemed sufficient if the oyster bed, laying or fishery is described by name or otherwise, without stating the same to be in any particular county or place. Section 864 (e).

372. Stealing things fixed to buildings or in land.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metal or other material, or of both, respectively fixed in or to any building whatsoever, or any thing made of metal fixed in any land, being private property, for a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground. 55-56 V., c. 29, s. 335.

This is a statutory offence and was not larceny at common law. R. v. Millar (1837), 7 C. & P., 665.

A wharf may be a building under this section. R. v. Rice (1859), 28 L. J. M. C., 64.

An unfinished structure intended for a dwelling, the roof of which has not been completed may be a building under this section. R. v. Worrall (1836), 7 C. & P., 516.

373. Trees, etc., of the value of twenty-five dollars.—Of the value of five dollars.—Every one is guilty of an indictable offence and liable to two years' imprisonment who steals the whole or any part of any tree, sapling or shrub, or any underwood, the thing stolen being of the value of twenty-five dollars, or of the value of five dollars if the thing stolen grows in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house. 55-56 V., c. 29, s. 336.

In an English case it was held that the words "adjoining any dwelling house" meant actual contact therewith, and that where the ground in question was separated from a house by a walk, wall or gate, it did not comply with the intent of the expression. R. v. Hodges (1829), M. & M., 341.

374. Trees, etc., of the value of twenty-five cents.—Every one who steals the whole or any part of any tree, sapling or shrub, or any underwood, the value of the article stolen, or the amount of the damage done, being twenty-five cents at the least, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars over and above the value of the article stolen or the amount of the injury done.

2. **Second offence.**—Every one who, having been convicted of any such offence, afterwards commits any such offence, is liable, on summary conviction, to three months' imprisonment with hard labour.

3. **Subsequent offence.**—Every one who, having been twice convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence and liable to five years' imprisonment. 55-56 V., c. 29, s. 337.

The amount of the damage done refers to the actual damage to the tree itself, not consequential injury resulting from the act of the accused. R. v. Whiteman (1854), 23 L. J., M. C., 120.

If the taking of the trees is done upon a bona fide claim of right in respect of the title to the land upon which they are growing, the criminal intent will be negatived. Robichaud v. Le Blanc (1898), 34 C. L. J., 324.

A theft of growing trees of a value of less than $25 from farm woodland is not an indictable offence, but a matter of summary conviction under Code sec. 374, except for a third offence, as thereby provided. R. v. Beauvais (1904), 7 C. C. C., 494.

See also R. v. Beale (1896), 1 C. C. C., 235; R. v. Shepherd (1868), 11 Cox C. C., 119.

375. Plants, etc., growing in garden.—Every one who steals any plant, root, fruit or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hot-house, green-house or conservatory is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the article so stolen or the amount of the injury done, or to one month's imprisonment with or without hard labour.

2. **Subsequent offence.**—Every one who, having been convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence and liable to three years' imprisonment. 55-56 V., c. 29, s. 341.

376. Cultivated plants, etc., growing elsewhere.—Every one who steals any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or

for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, pleasure ground or nursery ground, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five dollars over and above the value of the article so stolen or the amount of the injury done, or to one month's imprisonment with hard labour

2. **Subsequent offence.**—Every one who, having been convicted of any such offence, afterwards commits any such offence is liable to three months' imprisonment with hard labour. 55-56 V., c. 29, s. 342.

377. Fences, stiles or gates.—Every one who steals any part of any live or dead fence, or any wooden post, pale, wire or rail set up or used as a fence, or any stile or gate, or any part thereof respectively, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the article or articles so stolen or the amount of the injury done.

2. **Subsequent offence.**—Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. 55-56 V., c. 29, s. 339.

378. Ores or minerals from mines.—Every one is guilty of an indictable offence and liable to two years' imprisonment who steals the ore of any metal, or any quartz, lapis calaminaris, manganese, or mundic, or any piece of gold, silver or other metal, or any wad, black cawk, or black lead, or any coal, or cannel coal, or any marble, stone or other mineral, from any mine, bed or vein thereof respectively.

2. **Saving.**—It is not an offence to take, for the purposes of exploration or scientific investigation, any specimen or specimens of any ore or mineral from any piece of ground uninclosed and not occupied or worked as a mine, quarry or digging. 55-56 V., c. 29, s. 343.

As to search warrants for mined ore, see sec. 637.

379. Stealing from the person.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals any chattel, money or valuable security from the person of another. 55-56 V., c. 29, s. 344.

A. asked B. what time it was, and B. took out his watch to tell him, holding it loosely in both hands. A. caught hold of the ribbon and key attached to the watch and snatched it from B. and went away with it. Held that this was not robbery but stealing from the person. R. v. Walls (1845), 2 Car. & K., 214.

The removal caused or begun to be caused must be a removal from the person. So it was held that where a man went to bed with a prostitute,

leaving his watch in his hat on the table, and the woman stole it while he was asleep, such was not a stealing from the person but stealing in a dwelling house. R. v. Hamilton (1837), 8 C. & P., 49.

See also R. v. Thompson (1825), 1 Moody C. C., 78; R. v. Selway (1859), 8 Cox C. C., 235.

A conviction on summary trial that the accused "attempted to pick the pocket" of a person named, sufficiently describes the offence of attempting to commit theft. R. v. Morgan (1901), 5 C. C. C., 63.

Theft from the person is an indictable offence, although the amount is less than $10, and notwithstanding that the case might have been summarily tried by a magistrate without the prisoner's consent. R. v. Conlin (1897), 1 C. C. C., 41.

380. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, —

(a) **Stealing in dwelling-house.**—Steals in any dwelling-house any chattel, money or valuable security to the value in the whole of twenty-five dollars or more; or,

(b) **With threats or menaces.**—Steals any chattel, money or valuable security in any dwelling-house, and by any menace or threat puts any one therein in bodily fear. 55-56 V., c. 29, s. 345.

A person who in his own house steals from another person can be convicted under this section. R. v. Bowden (1843), 2 Moody C. C., 285.

But a contrary conclusion was arrived at in the cases of R. v. Thompson and R. v. Gould (1780), 2 East P. C., 644.

Stealing in a bedroom over a stable in a yard, not under the same roof, nor having any direct communication with the house in which the prosecutor resides, is not stealing in his dwelling house. R. v. Turner (1834), 6 Car. & P., 49.

Where money was delivered to the defendant for a particular purpose by his procurement, and he forthwith ran away with it, it is not an offence under this section. R. v. Campbell, 2 East P. C., 644.

But if a person on going to bed puts his clothes and money by his bedside they are under the protection of the dwelling house and not of the person. R. v. Hamilton, 8 C. & P., 49; R. v. Thomas, Car. Supp., 295.

It is a question for the Court and not for the jury whether goods are under the protection of the dwelling house or in the personal care of the owner. R. v. Thomas, supra.

Property left at a house for a person supposed to reside there will be under the protection of the house, and the stealing of them will be stealing in a dwelling house. R. v. Carroll (1825), 1 Moody C. C. 89;

381. Stealing by pick-locks, etc.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, by means of any pick-lock, false key or other instrument steals anything from any receptacle for property locked or otherwise secured. 55-56 V., c. 29, s. 346.

R. v. MacCaffery (1900), 4 C. C. C., 193.

382. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(a) **Stealing from vessels.**—Steals any goods or merchan-

dise in any vessel, barge or boat of any description whatsoever, in any haven or in any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin belonging to or communicating with any such haven, port, river or canal; or,

(b) **From wharfs.**—Steals any goods or merchandise from any dock, wharf or quay adjacent to any such haven, port, river, canal, creek or basin. 55-56 V., c. 29, s. 349.

The words "goods, wares and merchandise" in a similar statute, were held to extend to such goods only as are usually lodged in vessels or on wharves and quays. R. v. Leigh (1764), 1 Leach C. C., 52.

A passenger's luggage is included. R. v. Wright (1835), 7 C. & P., 159.

383. Wreck.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals any wreck. 55-56 V., c. 29, s. 350.

"Wreck" includes the cargo, stores and tackle of any vessel and all parts of a vessel separated therefrom, and also the property of shipwrecked persons. Sec. 2 (41).

384. On railway.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals anything in or from any railway station or building, or from any engine, tender or vehicle of any kind on any railway. 55-56 V., c. 29, s. 351.

A conviction for stealing "in or from" a building charges only one offence and is not, because of the disjunctive, void for duplicity and uncertainty. R. v. White (1901), 4 C. C. C., 430.

385. Things deposited in Indian graves.—Every one who steals, or unlawfully injures or removes, any image, bones, article or thing deposited in or near any Indian grave, is guilty of an offence and liable, on summary conviction, for a first offence, to a penalty not exceeding one hundred dollars or to three months' imprisonment, and for a subsequent offence to the same penalty and to six months' imprisonment with hard labour. 55-56 V., c. 29, s. 352.

386. Things not otherwise provided for.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals anything for the stealing of which no punishment is otherwise provided or commits in respect thereof any offence for which he is liable to the same punishment as if he had stolen the same.

2. **Subsequent offence.**—The offender is liable to ten years' imprisonment if he has been previously convicted of theft. 55-56 V., c. 29, s. 356.

Section 851 states that it is necessary to set forth in an indictment when the accused person is to be charged with a previous conviction.
Sections 963 and 964 relate to the procedure to be followed in such cases.

387. Value of things stolen over $200.—If the value of anything stolen, or in respect of which any offence is committed for which the offender is liable to the same punishment as if he had stolen it, exceeds the sum of two hundred dollars the offender is liable to two years' imprisonment, in addition to any punishment to which he is otherwise liable for such offence. 55-56 V., c. 29, s. 357.

388. Goods in process of manufacture.—Every one is guilty of an indictable offence and liable to five years' imprisonment who steals, to the value of two dollars, any woollen, linen, hempen or cotton yarn, or any goods or articles of sik, woollen, linen, cotton, alpaca or mohair, or of any one or more of such materials mixed with each other or mixed with any other material, while laid, placed or exposed, during any stage, process or progress of manufacture, in any building, field or other place. 55-56 V., c. 29, s. 347.

Goods may be within this section though the texture is complete if they have not yet been brought into saleable condition. R. v. Woodhead, 1 M. & Rob., 549; Hugill's Case, 2 Russell Cr. 6th ed., 403.

OFFENCES RESEMBLING THEFT.

389. Fraudulently disposing of things entrusted for manufacture.—Every one is guilty of an indictable offence and liable to two years' imprisonment, when the offence is not within the last preceding section, who, having been entrusted with, for the purpose of manufacture or for a special purpose connected with manufacture, or employed to make, any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax or silk, or any such materials mixed with one another, or having been so entrusted, as aforesaid, with any other article, materials, fabric or thing, or with any tools or apparatus for manufacturing the same, fraudulently disposes of the same or any part thereof. 55-56 V., c. 29, s. 348.

390. Criminal breach of trust.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being a trustee of any property for the use or benefit, either in whole or in part, of some other person, or for any public or charitable purpose, with intent to defraud, and in violation of his trust, converts anything of which he is trustee to any use not authorized by the trust. 55-56 V., c. 29, s. 363.

For definition of "trustee" see sec. 2 (39), and of "property", see sec. 2 (32). Section 596 provides that no proceeding or prosecution against a trustee for a criminal breach of trust shall be commenced without the sanction of the Attorney General.

It is not necessary that the indictment should allege the consent of the Attorney General. Knowlden v. R. (1864), 5 B. & S., 532, 549; R. v. Barnett (1889), 17 O. R., 649.

See also Major v. McCraney (1898), 2 C. C. C., 547.

391. Public servants refusing to deliver up property lawfully demanded.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, being employed in the service of His Majesty or of the Government of Canada or the Government of any province of Canada, or of any municipality, and entrusted by virtue of such employment with the keeping, receipt, custody, management or control of any chattel, money, valuable security, book, paper, account or document, refuses or fails to deliver up the same to any one authrized to demand it. 55-56 V., c. 29, s. 321.

See definition of "municipality" in sec. 2 (21) and of "valuable security" in sec. 2 (40).

392. Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(a) **Fraudulently taking cattle.**—Without the consent of the owner thereof fraudulently takes, holds, keeps in his possession, conceals, receives, appropriates, purchases or sells, or fraudulently causes or procures, or assists in the taking possession, concealing, appropriating, purchasing or selling of any cattle which are found astray; or,

(b) **Fraudulently refusing to deliver up cattle.**—Fraudulently refuses to deliver up any such cattle to the proper owner thereof, or to the person in charge thereof on behalf of such owner, or authorized by such owner to receive such cattle; or,

(c) **Defacing brand on cattle.**—Without the consent of the owner, fraudulently, wholly or partially obliterates, or alters or defaces, or causes or procures to be obliterated, altered or defaced, any brand or mark on any cattle, or makes or causes or procures to be made any false or counterfeit brand or mark on any cattle. 1 E. VII., c. 42, s. 2.

See section 989.

393. Unlawfully injuring pigeons.—Every one who unlawfully and wilfully kills, wounds or takes any house-dove or pigeon, under such circumstances as do not amount to theft, is guilty of an offence and liable, upon complaint of the owner thereof, on summary conviction, to a penalty not exceeding ten

dollars over and above the value of the bird. 55-56 V., c. 29, s. 333.

Sec. 345 provides that tame pigeons shall be capable of being stolen so long only as they are in a dovecot or on their owner's land.

394. Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(a) without the consent of the owner thereof,

(i) **Fraudulently taking, possessesing, etc., drift timber.**—Fraudulently takes, holds, keeps in his possession, collects, conceals, receives, appropriates, purchases, sells or causes or procures or assists to be taken possession of, collected, concealed, received, appropriated, purchased or sold, any timber, mast, spar, saw-log or other description of lumber which is found adrift in, or cast ashore on the bank or beach of, any river, stream or lake, or

(ii) **Defacing mark on same.**—Wholly or partially defaces or adds or causes or procures to be defaced or added, any mark or number on any such timber, mast, spar, saw-log or other description of lumber, or makes or causes or procures to be made any false or counterfeit mark on any such timber, mast, spar, saw-log or other description of lumber; or,

(b) **Refusing to deliver to owner.**—Refuses to deliver up to the proper owner thereof, or to the person in charge thereof, on behalf of such owner, or authorized by such owner to receive the same, any such timber, mast, spar, saw-log or other description of lumber. 55-56 V., c. 29, s. 338.

Section 990 defines what is sufficient evidence of ownership in a prosecution for an offence under this section.

395. Possessing trees, etc., without being able to account therefor.—Every one who, having in his possession, or on his premises with his knowledge, the whole or any part of any tree, sapling or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile or gate, or any part thereof, of the value of twenty-five cents at the least, is taken or summoned before a justice of the peace, and does not satisfy such justice that he came lawfully by the same, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding ten dollars over and above the value of the article so in his possession or on his premises. 55-56 V., c. 29, s. 340.

See Re Caswell (1873), 33 U. C. Q. B., 303.

396. Destroying documents of title.—Every one who destroys, cancels, conceals or obliterates any document of title to

goods or lands, or any valuable security, testamentary instrument, or judicial, official or other document, for any fraudulent purpose, is guilty of an indictable offence and liable to the same punishment as if he had stolen such document, security or instrument. 55-56 V., c. 29, s. 353.

For the statutory definitions of "valuable security," "testamentary instrument," "document of title," see sec. 2.

Maliciously destroying an information or record of a Police Court is an offence within this section. R. v. Mason (1872), 22 U. C. C. P., 246.

397. Concealing anything capable of being stolen.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, for any fraudulent purpose, takes, obtains, removes or conceals anything capable of being stolen. 55-56 V., c. 29, s. 354.

The words at the end of the section "any thing capable of being stolen" do not mean anything capable of being stolen by the accused. They include anything which comes within the definition given in sec. 344.

The gist of the offence created by this section is the concealing for a fraudulent purpose and it is not incumbent on the prosecution to shew that the fraudulent purpose was accomplished. R. v. Goldstaub (1895), 10 Man. R., 497.

398. Bringing stolen property into Canada.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, having obtained elsewhere than in Canada any property by any act which if done in Canada would have amounted to theft, brings such property into or has the same in Canada. 55-56 V., c. 29, s. 355.

See definition of "property" in section 2 (32).

Sec. 399 deals with the offence of knowingly receiving in Canada goods obtained anywhere by an act which, if committed in Canada, would have constituted an indictable offence under the Code.

RECEIVING STOLEN GOODS.

399. Receiving property obtained by crime.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who receives or retains in his possession anything obtained by any offence punishable on indictment, or by any acts wheresoever committed, which, if committed in Canada would have constituted an offence punishable upon indictment, knowing such thing to have been so obtained. 55-56 V., c. 29, s. 314.

Having in one's possession includes not only having in one's own personal possession, but also knowingly: (1) having in the actual possession or custody of any other person, and (2) having in any place (whether belonging to or occupied by one's self or not) for the use or benefit of one's self or of any other person. Section 5.

By virtue of section 849 every one charged with having received any property knowing it to have been stolen, may be indicted, whether the principal offender has or has not been indicted or convicted, or is, or is not amenable to justice; and any number of the receivers of any part or parts of the stolen property may be tried together.

For procedure see also secs. 954, 993 and 994.

Evidence of guilty knowledge may consist of proof that the accused bought the stolen property at very much under its value. 1 Hale, 619.

Or falsely denied his possession of it. Archbold Cr. Ev., 519.

A person having a joint possession with the thief may be convicted as a receiver. Sec. 402. McIntosh v. R. (1894), 23 S. C. R., 180, 193.

When the principal has been previously convicted, such conviction is presumptive evidence that every thing in the former proceeding was rightly and properly transacted, but it is competent to the receiver to controvert the guilt of the principal. McIntosh v. R. (1894), 23 S. C. R. at p. 189; 2 Russel on Crimes, 4th ed., 571.

The confession of the thief is not evidence against the receiver unless made in the presence of and concurred in by the latter. R. v. Cox (1858), 1 F. & F., 90.

But the evidence of the thief was admissible against the receiver even before the Canada Evidence Act. R. v. Haslam, 2 Leach C. C., 467.

Subject, however, to proper directions being given to the jury as to its weight if uncorroborated, it being the evidence of an accomplice. R. v. Robinson (1864), 4 F. & F., 43.

If a person receives goods which he knows to have been stolen, for the mere purpose of concealment without deriving any profit therefrom, he is nevertheless guilty under this section. R. v. Richardson (1834), 6 Car. & P., 335; R. v. Davis (1833), 6 Car. & P., 177.

The mere fact that the goods in question were found on the prisoner's premises does not so far confirm the evidence of the thief as to make it proper to convict the accused. R. v. Pratt (1865), 4 F. & F., 315.

Where an accused person had been found in the recent possession of some stolen sheep of which he could give no satisfactory account, and it might reasonably be inferred from the circumstances that he did not steal them himself, it was held that there was evidence from which the jury could infer that he received them knowing them to have been stolen. R. v. Langmead (1864), 9 Cox C. C., 464.

It is a presumption of fact, and not an implication of law, from the evidence of recent possession of stolen property unaccounted for, whether the offence of stealing or receiving has been committed. R. v. Langmead, supra.

See also R. v. Wiley (1850), 20 L. J., M. C., 4; R. v. Reardon (1866), 35 L. J., M. C., 171.

400. Receiving stolen property.—Every one is guilty of an indictable offence and liable to five years' imprisonment who receives or retains in his possession, any post letter or post letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offence, knowing the same to have been stolen. 55-56 V., c. 29, s. 315.

As to procedure, see secs. 850 and 869.

401. Receiving property obtained by offence punishable on summary conviction.—Every one who receives or retain in his possession anything, knowing the same to have been

unlawfully obtained, the stealing of which is punishable on summary conviction, either for every offence, or for the first and second offence only, is guilty of an offence and liable on summary conviction, for every first, second or subsequent offence of receiving, to the same punishment as if he were guilty of a first, second or subsequent offence of stealing the same. 55-56 V., c. 29, s. 316.

402. When receiving is complete.—The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over such thing, or aids in concealing or disposing of it. 55-56 V., c. 29, s. 317.

In the offence of receiving stolen goods, the stolen goods must have been taken and stolen by a person other than the person accused of the receiving. R. v. Lamoureux (1900), 4 C. C. C., 101.

403. Receiving after restoration to owner.—When the thing unlawfully obtained has been restored to the owner, or when a legal title to the thing so obtained has been acquired by any person, a subsequent receiving thereof shall not be an offence although the receiver may know that the thing had been previously unlawfully obtained. 55-56 V., c. 29, s. 318.

The leading English case on the subject is in accordance with the law as declared in this section. R. v. Villensky (1892), 2 Q. B. D., 597.

FALSE PRETENSES.

404. Definition.—A false pretense is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

2. **Exaggeration.**—Exaggerated commendation or depreciation of the quality of any thing is not a false pretense, unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

3. **Question of fact.**—It is a question of fact whether such commendation or depreciation does or does not amount to a fraudulent misrepresentation of fact. 55-56 V., c. 29, s. 358.

The pretence need not be in words, but it may be sufficiently gathered from the acts and conduct of the party. 2 Bishop on Crimes, par. 430; R. v. Letang (1899), 2 C. C. C., 505.

A person who is present when a false representation is made by another person acting in conjunction with him, and who knows it to be false,

and gets part of a sum of money obtained by such false pretence, is guilty of obtaining such sum of money by false pretences. R. v. Cadden (1899), 5 C. C. C., 45.

See also R. v. Witchell, 2 East P. C., 830; R. v. Eagleton (1855), 1 Dearsly C. C., 515; R. v. Jackson, 3 Camp., 370; R. v. Hazelton, L. R., 2 C. C. R., 134; R. v. Davies, 18 U. C. Q. B., 180; R. v. Parkinson, 41 U. C. Q. B., 545; R. v. Woolley (1850), 1 Dennison C. C., 566; R. v. Kerrigan (1864), 33 L. J., M. C., 71; R. v. Clark (1892), 2 B. C. R., 191.

The distinction between the offence of obtaining property by false pretences and the offence of theft is that where the owner of property is induced to part with the possession only, still intending to retain the right of property, the party thus obtaining possession will be guilty of theft, but if the owner parts not only with his possession but also with his right of property, the person thus obtaining the goods will be guilty of obtaining goods by false pretences. R. v. Middleton (1873), L. R., 2 C. C. R., 38; Powell v. Hogland (1851), Ex Reps., 70.

On an indictment for the offence of having obtained money by false pretences, the defendants cannot be convicted of the full offence when it is proved that by the discount of their promissory note they had only obtained a credit in account, such credit in account being a thing not capable of being stolen, but they might, if the evidence should establish an attempt to obtain the money, be convicted of such attempt. R. v. Boyd (1896), 4 C. C. C., 219.

To prove that the board of a corporation had acted on the faith of the false representation made, it is not necessary to examine one or more of the directors, if the fact can be proved by other competent witnesses. R. v. Boyd, supra.

To prove a charge of obtaining goods by false pretences where there is a lapse of time between the making of the pretence and the delivery of the goods, there must be a direct connection between them constituting the former a continuing pretence up to the time of delivery. R. v. Harty (1898), 2 C. C. C., 103.

The word "owner" following the signature of the accused in a letter written by him inviting negotiations for the charter of a vessel in his possession and managed by him, does not in itself constitute a representation by the accused that he is the "registered owner.". R. v. Harty, supra.

The question whether or not the pretence is a continuing one is one of fact for the jury. R. v. Martin (1867), 10 Cox C. C., 383.

In an English case it was held that being garbed in a university cap and gown for the purpose of fraudulently obtaining credit constituted a false pretence. R. v. Barnard (1837), 7 C. & P., 784.

See also R. v. Burrows (1869), 11 Cox C. C., 258.

A false pretence must be the false pretence of an existing fact, and if the person to whom it is made is defrauded by it, it makes no difference that he might have known that the pretence was false, or that it is not such a pretence as would be likely to defraud a person of ordinary caution. R. v. Woolley (1850), 4 Cox C. C., 193; R. v. English (1872), 12 Cox C. C., 171.

But an indictment for obtaining money by false pretences cannot be sustained if the prosecutor, when he parted with his money, knew that the representations made to him were false. R. v. Mills (1857), 7 Cox C. C., 263.

To constitute the offence it is essential that there should be an intention to deprive the owner wholly of the property in the chattel in question, and therefore the obtaining by false pretences of the use of a chattel for a limited time only, is not an obtaining by false pretences within the meaning of this section. R. v. Garrett (1853), 6 Cox C. C., 260.

An indictment cannot be sustained under this section when the false pretence was made after the accused got possession of the chattel in question. R. v. Brooks (1859), 1 F. & F., 502.

But the false pretence need not be made to the person from whom the goods or money are obtained, the mode in which the pretence to A. affected the obtaining from B. being a matter of evidence. R. v. Brown (1847), 2 Cox C. C., 348.

A person who makes a false pretence of having a power to do something, whether the power is physical, moral or supernatural, for the purpose of obtaining money or goods, is indictable under this section. R. v. Giles (1865), 10 Cox C. C., 44.

A simple misrepresentation of the quality of goods is not a false pretence, provided that the goods are in kind that which they are represented to be. R. v. Bryan (1857), 7 Cox C. C., 312; R. v. Lee (1859), 8 Cox C. C., 233.

A person may be convicted under this section when he has obtained goods through having falsely represented himself to be doing a large business. R. v. Cooper (1877), 13 Cox C. C., 617.

R. v. Crab (1868), 11 Cox C. C., 85.

Upon a charge of obtaining goods under false pretences, evidence of other similar acts committed by the accused is not admissible in corroboration of the fact that he committed the act charged, but upon due proof of the act charged such evidence may be given in proof of criminal intent or of guilty knowledge. R. v. Komiensky (1903), 7 C. C. C., 27.

False representations amounting to mere promises or professions of intention, though they induce the defrauded party to part with his property are not false pretences under this section, as they are not representations of a matter of fact either present or past. R. v. Nowe (1904), 8 C. C. C., 441.

The giving of a post-dated cheque implies no more than a promise to have sufficient funds in the banks on the date thereof and is not, in itself, a false representation of a fact past or present. R. v. Richard (1906), 11 C. C. C., 279.

405. Obtaining by false pretense.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud, by any false pretense, either directly or through the medium of any contract obtained by such false pretense, obtains anything capable of being stolen, or procures anything capable of being stolen to be delivered to any other person than himself. 55-56 V., c. 29, s. 359.

It is not necessary that the indictment should allege an intent to defraud a particular person. Section 855.

See R. v. Dessauer (1861), 21 U. C., Q. B., 231; R. v. Skelton (1898), 4 C. C. C., 467; R. v. Patterson (1895), 2 C. C. C., 339.

The prisoner at Seaforth, in the county of Huron, falsely represented to the agent of a sewing machine company there that he owned a parcel of land when in fact he never owned any land. The goods were obtained at Huron though they were sent from Toronto, and the false pretence relied on was made in Huron. It was held that the offence was complete in Huron county and could not be tried in the county of York. R. v. Feithenheimer (1876), 26 U. C. C. P., 139.

On an indictment for obtaining money under false pretences, the accused may be convicted of an attempt to commit the offence. Sec. 949.

406. Execution of valuable security obtained by fraud.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud or injure any person by any false pretense, causes or induces any person to

execute, make, accept, endorse or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security. 55-56 V., c. 29, s. 360.

See definition of valuable security in sec. 2 (40).

The offence referred to in this section is complete, although the document in question might not be of any value until it has been delivered into the hands of the accused. R. v. Gordon (1889), 16 Cox C. C., 622.

See also R. v. Essex (1857), 7 Cox C. C., 384; R. v. Danger (1857), Dears. & B., 307.

A lien note is a "valuable security" within the meaning of this section. R. v. Wagner (1901), 6 C. C. C., 113.

407. Falsely pretending to inclose money in letter.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, wrongfully and with wilful falsehood, pretends or alleges that he inclosed and sent, or caused to be inclosed and sent, in any post letter any money, valuable security or chattel, which in fact he did not so inclose and send or cause to be inclosed and sent therein. 55-56 V., c. 29, s. 361.

By section 846 it is not necessary to allege in an indictment for an offence under this section, or to prove at a trial therefor, that the act was committed with the intent to defraud.

PERSONATION.

408. Offence. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who, with intent fraudulently to obtain any property, personates any person, living or dead, or the administrator, wife, widow, next of kin or relation of any person. 55-56 V., c. 29, s. 456.

See R. v. Lake (1869), 11 Cox C. C., 333; R. v. Cramp (1817), R. & R., 324; R. v. Potts (1818), R. & R., 353.

409. Personation at examinations.—Every one is guilty of an indictable offence, and liable, on indictment or summary conviction, to one year's imprisonment, or to a fine of one hundred dollars, who falsely, with intent to gain some advantage for himself or some other person, personates a candidate at any competitive or qualifying examination, held under the authority of any law or statute, or in connection with any university or college, or who procures himself or any other person to be personated at any such examination, or who knowingly avails himself of the results of such personation. 55-56 V., c. 29, s. 457.

410. Penalty.—Every one is guilty of an indictable offence

and liable to fourteen years' imprisonment who falsely and deceitfully personates,—

(a) **Personating owner of Government stock.**—Any owner of any share or interest of or in any stock, annuity or other public fund transferable in any book of account kept by the Government of Canada or of any province thereof, or by any bank for any such Government; or,

(b) **Company stock.**—Any owner of any share or interest of or in the debt of any public body, or of or in the debt or capital stock of any body corporate, company, or society; or,

(c) **Dividends.**—Any owner of any dividend, coupon, certificate or money payable in respect of any such share or interest as aforesaid; or,

(d) **Grant of land or scrip.**—Any owner of any share or interest in any claim for a grant of land from the Crown, or for any scrip or other payment or allowance in lieu of such grant of land; or,

(e) **Person under power of attorney.**—Any person duly authorized by any power of attorney to transfer any such share or interest, or to receive any dividend, coupon, certificate or money on behalf of the person entitled thereto;

Transfer under personation.—And thereby transfers or endeavours to transfer any share or interest belonging to such owner, or thereby obtains or endeavours to obtain, as if he were the true and lawful owner or were the person so authorized by such power of attorney, any money due to any such owner or payable to the person so authorized, or any certificate, coupon or share warrant, grant of land, or scrip, or allowance in lieu thereof, or other document which, by any law in force, or any usage existing at the time, is deliverable to the owner of any such stock or fund, or to the person authorized by any such power of attorney. 55-56 V., c. 29, s. 458.

411. Acknowledging instrument in false name.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority or excuse, the proof of which shall lie on him, acknowledges, in the name of any other person, before any court, judge or other person lawfully authorized in that behalf, any recognizance of bail, or any *cognovit actionem*, or consent for judgment, or judgment, or any deed or other instrument. 55-56 V., c. 29, s. 459.

412. Obtaining passage by false ticket.—Every one is guilty of an indictable offence and liable to six months' imprisonment who, by means of any false ticket or order, or of any other ticket or order, fraudulently and unlawfully obtains or attempts to obtain any passage on any carriage, tramway or railway, or in any steam or other vessel. 55-56 V., c. 29, s. 362.

413. Penalty.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being a director, manager, public officer or member of any body corporate or public company, with intent to defraud,—

(a) **Official destroying security.**—Destroys, alters, mutilates or falsifies any book, paper, writing or valuable security belonging to the body corporate or public company; or,

(b) **Making false entry in book.**—Makes, or concurs in making, any false entry, or omits or concurs in omitting to enter any material particular, in any book of account or other document. 55-56 V., c. 29, s. 364.

An indictment charging bank officials with having made a monthly report, etc., "a wilful, false and deceptive statement" of and concerning the affairs of the bank, with intent to deceive, sufficiently charges the offence, under the Bank Act, of having made "a wilfully false or deceptive statement in any return or report" with such intent. R. v. Weir (1899), 3 C. C. C., 102.

414. False prospectus, etc., by directors, etc.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, being a promoter, director, public officer or manager of any body corporate or public company, either existing or intended to be formed, makes, circulates, or publishes, or concurs in making, circulating or publishing any prospectus, statement or account which he knows to be false in any material particular, with intent to induce persons whether ascertained or not to become shareholders or partners, or with intent to deceive or defraud the members, shareholders or creditors, or any of them, whether ascertained or not, of such body corporate or public company, or with intent to induce any person to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof. 55-56 V., c. 29, s. 365.

In considering a charge against the president of an incorporated company for publishing a false statement under Code sec. 414, judicial notice will be taken of the Statutes of another province under which the company was incorporated, requiring the president to be chosen from the directors; and a warrant of commitment against the president, as such, after

proof of the manner of incorporation, need not allege that he was a director. R. v. Gillespie (1898), 1 C. C. C., 551.

Where the offence charged was the making, circulation and publication of false statements of the financial position of a company, and it appeared that the statements were mailed from a place in Ontario to the parties intended to be deceived in Montreal, the offence, although commenced in Ontario, is completed in the Province of Quebec by the delivery of the letters to the parties to whom they were addressed.

In such case, the Courts of the Province of Quebec have jurisdiction to try the accused, if he has been duly committed for trial by a magistrate of the district. R. v. Gillespie (1898), 2 C. C. C., 309.

If a director or manager of a public company publishes a false statement of account knowing that it is false, with the intent that it shall be acted upon by those whom it reaches, he is guilty in law of publishing such statement with intent to defraud. R. v. Birt (1899), 63 J. P., 328 (Central Cr. Court).

See also R. v. Girdwood (1776), 2 East P. C., 1120; R. v. Cooke (1858), 1 F. & F., 64; R. v. Holmes (1883), 15 Cox C. C., 343.

415. Penalty.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being or acting in the capacity of an officer, clerk, or servant, with intent to defraud,—

(a) **Official altering or mutilating of book.**—Destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or document which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or concurs in the same being done; or

(b) **Making false entry.**—Makes, or concurs in making, any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in, any such book, paper, writing, valuable security or document. 55-56 V., c. 29, s. 366.

See R. v. Williams (1900), 19 Cox C. C., 239; Re Hall (1883), 3 O. R., 331.

416. False return by public officer.—Every one is guilty of an indictable offence and liable to five years' imprisonment, and to a fine not exceeding five hundred dollars, who, being an officer, collector or receiver, entrusted with the receipt, custody or management of any part of the public revenues, knowingly furnishes any false statement or return of any sum of money collected by him or entrusted to his care, or of any balance of money in his hands or under his control. 55-56 V., c. 29, s. 367.

The wilful intent to make a false return may be inferred by the jury from all the circumstances of the case proved to their satisfaction. R. v. Hincks (1879), 24 L. C. J., 116.

417. Penalty.—Every one is guilty of an indictable offence and liable to a fine of eight hundred dollars and to one year's imprisonment who,—

(a) **Disposal of property, etc., with intent to defraud creditors.**—With intent to defraud his creditors, or any of them,

(i) makes, or causes to be made any gift, conveyance, assignment, sale, transfer or delivery of his property, or

(ii) removes, conceals or disposes of any of his property; or,

(b) **Receiving property.**—With the intent that any one shall so defraud his creditors, or any one of them, receives any such property; or,

(c) **Being a trader fails to keep accounts.**—Being a trader and indebted to an amount exceeding one thousand dollars, is unable to pay his creditors in full and has not, for five years next before such inability, kept such books of account as, according to the usual course of any trade or business in which he may have been engaged, are necessary to exhibit or explain his transactions, unless he be able to account for his losses to the satisfaction of the court or judge and to show that the absence of such books was not intended to defraud his creditors. 55-56 V., c. 29, s. 368; 4 E. VII., c. 7, s. 1.

It is not essential that the debt of the creditor should at the time of assignment be actually due. R. v. Henry (1891), 21 O. R., 113.

It is properly left to the jury to say whether the defendant put the property out of his hands, transferred or disposed of it for the purpose of defrauding his creditors, although in the course of that transaction he satisfied a debt due to the creditor to whom the property was assigned. R. v. Potter (1860), 10 U. C. C. P., 39.

See also Shorey v. Jones (1888), 15 S. C. R., 398; R. v. Shaw (1895), 31 N. S. R., 534.

418. Destroying or falsifying books to defraud creditors.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who, with intent to defraud his creditors or any of them, destroys, alters, mutilates or falsifies any of his books, papers, writings or securities, or makes, or is privy to the making of, any false or fraudulent entry in any book of account or other document. 55-56 V., c. 29, s. 369.

419. Vendor concealing deeds or encumbrances or falsifying pedigrees.—Every one is guilty of an indictable offence and liable to a fine, or to two years' imprisonment, or to both, who, being a seller or mortgagor of land, or of any chattel, real or personal, or chose in action, or the solicitor or agent of any such seller or mortgagor (and having been served with a written demand of an abstract of title by or on behalf of the purchaser or mortgagee before the completion of the purchase or mortgage) conceals any settlement, deed, will or other instrument material to the title, or any encumbrance, from such purchaser or mortgagee, or falsifies any pedigree upon which the title depends, with intent

to defraud and in order to induce such purchaser or mortgagee to accept the title offered or produced to him. 55-56 V., c. 29, s. 370.

Section 597 states that no prosecution for an offence under this section shall be commenced without the leave of the Attorney General.

420. Fraudulent registration of titles.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, acting either as principal or agent, in any proceeding to obtain the registration of any title to land or otherwise, or in any transaction relating to land which is, or is proposed to be, put on the register, knowingly and with intent to deceive makes or assists or joins in, or is privy to the making of, any material false statement or representation, or suppresses, conceals, assists or joins in, or is privy to the suppression, withholding or concealing from, any judge or registrar, or any person employed by or assisting the registrar, any material document, fact or matter of information. 55-56 V., c. 29, s. 371.

421. Fraudulent sales of property.—Every one is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding two thousand dollars, who, knowing the existence of any unregistered prior sale, grant, mortgage, hypothec, privilege or encumbrance of or upon any real property, fraudulently makes any subsequent sale of the same, or of any part thereof. 55-56 V., c. 29, s. 372.

422. Fraudulent hypothecation of real property.—Every one who pretends to hypothecate, mortgage, or otherwise charge any real property to which he knows he has no legal or equitable title is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding one hundred dollars.

2. **Burden of proof.**—The proof of the ownership of the real estate rests with the person so pretending to deal with the same. 55-56 V., c. 29, s. 373.

423. Fraudulent seizures of land under execution.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, in the province of Quebec, wilfully causes or procures to be seized and taken in execution any lands and tenements, or other real property, not being at the time of such seizure, to the knowledge of the person causing the same to be taken in execution, the *bona fide* property of the person or persons against whom, or whose estate, the execution is issued. 55-56 V., c. 29, s. 374.

424. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who,—

(a) **Holder of lease of gold or silver mine defrauding owner.**—Being the holder of any lease or license issued under the provisions of any Act relating to gold or silver mining, or by any persons owning land supposed to contain any gold or silver, by fraudulent device or contrivance defrauds or attempts to defraud His Majesty, or any person, of any gold, silver or money payable or reserved by such lease, or, with such intent as aforesaid, conceals or makes a false statement as to the amount of gold or silver procured by him; or,

(b) **Unlawful sale of quartz, gold or silver.**—Not being the owner or agent of the owners of mining claims then being worked, and not being thereunto authorized in writing by the proper officer in that behalf named in any Act relating to mines in force in any province of Canada, sells or purchases, except to or from such owner or authorized person, any quartz containing gold, or any smelted gold or silver, at or within three miles of any gold district or mining district, or gold mining division; or,

(c) **Unlawful purchase of quartz, gold or silver.**—Purchases any gold in quartz, or any unsmelted or smelted gold or silver, or otherwise unmanufactured gold or silver, of the value of one dollar or upwards, except from such owner or authorized person, and does not, at the same time, execute in triplicate an instrument in writing, stating the place and time of purchase, and the quantity, quality and value of gold or silver so purchased, and the name or names of the person or persons from whom the same was purchased, and file the same with such proper officer within twenty days next after the date of such purchase. 55-56 V., c. 29, s. 375.

As to search warrant for gold, silver, etc., see section 637.

425. Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment, who,—

(a) **Warehouseman, etc., delivering receipt for goods without receiving them.**—Being the keeper of any warehouse, or a forwarder, miller, master of a vessel, wharfinger, keeper of a cove, yard, harbour or other place for storing timber, deals, staves, boards, or lumber, curer or packer of pork, or dealer in wool, carrier, factor, agent or other person, or a clerk or other person in his employ, knowingly and wilfully gives to any person a writing purporting to be a receipt for, or an acknowledgment of, any goods or other property as having been received into his warehouse, vessel, cove, wharf, or other place, or in any such place about which he is employed, or in any other manner received by him, or by the person in or about whose business he is employed, before the goods or other property named in such receipt, acknowledgment or writing have been actually delivered to or received

by him as aforesaid, with intent to mislead, deceive, injure or defraud any person, although such person is then unknown to him; or,

(b) **Accepting etc., false receipt.**—Knowingly and wilfully accepts, transmits or uses any such false receipt or acknowledgment or writing. 55-56 V., c. 29, s. 376.

426. Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment, who,—

(a) **Fraudulent disposal of merchandise as to which money has been advanced or security given by consignee.**—Having, in his name, shipped or delivered to the keeper of any warehouse, or to any other factor, agent or carrier, to be shipped or carried, any merchandise upon which the consignee has advanced any money or given any valuable security, afterwards, with intent to deceive, defraud or injure such consignee, in violation of good faith, and without the consent of such consignee, makes any disposition of such merchandise different from and inconsistent with the agreement made in that behalf between him and such consignee at the time when or before such money was so advanced or such security given; or,

(b) **Aiding in disposal.**—Knowingly and wilfully aids and assists in making such disposition for the purpose of deceiving, defrauding or injuring such consignee.

2. **Saving.**—No person commits an offence under this section who, before making such disposition of such merchandise, pays or tenders to the consignee the full amount of any advance made thereon. 55-56 V., c. 29, s. 377.

427. Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(a) **Fraudulent receipts under the Bank Act.**—Wilfully makes any false statement in any receipt, certificate or acknowledgment for grain, timber or other goods or property which can be used for any of the purposes mentioned in the Bank Act; or,

(b) **Fraudulently alienating property covered by receipt.**—Having given, or after any clerk or person in his employ has, to his knowledge, given, as having been received by him in any mill warehouse vessel, cove or other place, any such receipt, certificate or acknowledgment for any such grain, timber or other goods or property, or having obtained any such receipt, certificate or acknowledgment, and after having endorsed or assigned it to any bank or person, afterwards, and without the consent of the holder or endorsee in writing, or the production and delivery of the receipt, certificate or acknowledgment, wilfully alienates or parts with, or does not deliver to such holder or owner of such

receipt, certificate or acknowledgment, the grain, timber, goods or other property therein mentioned. 55-56 V., c. 29, s. 378.

428. Innocent partners.—If any offence mentioned in any of the three sections last preceding is committed by the doing of anything in the name of any firm, company or copartnership of persons, the person by whom such thing is actually done, or who connives at the doing thereof, is alone guilty of the offence. 55-56 V., c. 29. s. 379.

429. Selling vessel or wreck without title.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, not having lawful title thereto, sells any vessel or wreck found within the limits of Canada. 55-56 V., c. 29, s. 380.

The term "wreck" includes the cargo, stores and tackle of any vessel and all parts of a vessel separated therefrom, and also the property of shipwrecked persons. Section 2 (41).

430.—Every one who,—

(a) **Secreting wreck, etc.**—Secretes any wreck, or defaces or obliterates the marks thereon, or uses means to disguise the fact that it is wreck, or in any manner conceals the character thereof, or the fact that the same is wreck, from any person entitled to inquire into the same; or,

(b) **Receiving wreck.**—Receives any wreck, knowing the same to be wreck, from any person other than the owner thereof or the receiver of wrecks, and does not within forty-eight hours inform the receiver thereof; or,

(c) **Sale of wreck.**—Offers for sale or otherwise deals with any wreck, knowing it to be wreck, not having a lawful title to sell or deal with the same; or,

(d) **Keeping wreck.**—Keeps in his possession any wreck, knowing it to be wreck, without a lawful title so to keep the same, for any time longer than the time reasonably necessary for the delivery of the same to the receiver; or,

(e) **Boarding wrecked vessel.**—Boards any vessel which is wrecked, stranded or in distress against the will of the master, unless the person so boarding is, or acts by command of the receiver;

Penalty.—Is guilty of an offence punishable on indictment with two years' imprisonment, and on summary conviction before two justices with a penalty of four hundred dollars or six months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 381.

431. Purchasing old marine stores from person under sixteen.—Every person dealing in old marine stores of any

description, including anchors, cables, sails, junk, iron, copper, brass, lead or other marine stores, who, by himself or his agent, purchases any old marine stores from any person under the age of sixteen years, is guilty of an offence and liable, on summary conviction, to a penalty of four dollars for the first offence and of six dollars for every subsequent offence.

2. **Receiving old marine stores.**—Every such person who, by himself or his agent, purchases or receives any old marine stores into his shop, premises or place of deposit, except in the daytime between sunrise and sunset, is guilty of an offence and liable, on summary conviction, to a penalty of five dollars for the first offence and of seven dollars for every subsequent offence.

3. **Having in possession.**—Every person, purporting to be a dealer in old marine stores, on whose premises any such stores which have been stolen are found secreted, is guilty of an indictable offence and liable to five years' imprisonment. 55-56 V., c. 29, s. 382.

432. Marks to be used on public stores.—The marks specified in this section in that behalf may be applied in or on any public stores to denote His Majesty's property in such stores.

Marks appropriated for His Majesty's use in or on Naval, Military, Ordnance, Barrack, Hospital and Victualling Stores.

STORES.	MARKS.
Hempen cordage and wire rope.	White, black or coloured threads laid up with the yarns and the wire, respectively.
Canvas, fea nought, hammocks and seamen's bags.	A blue line in a serpentine form.
Bunting.	A double tape in the warp.
Candles.	Blue or red cotton threads in each wick, or wicks of red cotton.
Timber, metal and other stores not before enumerated.	The broad arrow, with or without the letters W.D.

Marks appropriated for use on stores, the property of His Majesty in the right of his Government of Canada.

STORES.	MARKS.
Public stores.	The name of any public department, or the word 'Canada,' either alone or in combination with a Crown or the Royal Arms.
Militia stores.	The broad arrow within the letter C.

2. **Application by officer.**—It shall be lawful for any public department, and the contractors, officers and workmen of such department, to apply such marks, or any of them, in or on any such stores. 55-56 V., c. 29, s. 384.

433. Unlawfully applying marks.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who, without lawful authority the proof of which shall lie on him, applies any of the said marks in or on any public stores. 55-56 V., c. 29, s. 385.

434. Obliterating marks from public stores.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who, with intent to conceal His Majesty's property in any public stores, takes out, destroys or obliterates, wholly or in part, any of the said marks. 55-56 V., c. 29, s. 386.

435. Unlawful possession, sale, etc., of public stores.—Every one who, without lawful authority the proof of which lies on him, receives, possesses, keeps, sells or delivers any public stores bearing any such mark as aforesaid, knowing them to bear such mark, is guilty of an offence punishable on indictment or on summary conviction, and liable, on conviction on indictment, to one year's imprisonment, and, if the value thereof does not exceed twenty-five dollars, on summary conviction before two justices, to a fine of one hundred dollars or to six months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 387.

Section 991 relates to the proof required to support a conviction under these sections. See section 5 as to what constitutes possession.

436. Being in possession without being able to justify.—Every one, not being in His Majesty's service, or a dealer in marine stores or a dealer in old metals, in whose possession any public stores bearing any such mark are found who, when taken or summoned before two justices, does not satisfy such justices that he came lawfully by such stores, is guilty of an offence and liable, on summary conviction, to a fine of twenty-five dollars.

2. **Summoning former possessors.**—If any such person satisfies such justices that he came lawfully by the stores so found, the justices, in their discretion, as the evidence given or the circumstances of the case require, may summon before them every person through whose hands such stores appear to have passed.

3. **Every unlawful possessor liable.**—Every one who has had possession thereof, who does not satisfy such justices that he

came lawfully by the same is liable, on summary conviction, of having had possession thereof, to a fine of twenty-five dollars, and in default of payment to three months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 388.

437. Searching for stores near His Majesty's vessels, wharfs or docks.—Every one who, without permission in writing from the Admiralty, or from some person authorized by the Admiralty in that behalf, creeps, sweeps, dredges, or otherwise searches for stores in the sea, or any tidal or inland water, within one hundred yards from any vessel belonging to His Majesty or in His Majesty's service, or from any mooring place or anchoring place appropriated to such vessels, or from any mooring belonging to His Majesty, or from any of His Majesty's wharfs or docks, or victualling or steam factory yards, is guilty of an offence and liable, on summary conviction before two justices to a fine of twenty-five dollars, or three months' imprisonment, with or without hard labour. 55-56 V., c. 29, s. 389.

438. Every one who,—

(a) **Receiving clothing or furniture from soldiers or deserters.**—Buys, exchanges or detains, or otherwise receives from any soldier, militiaman or deserter any arms, clothing or furniture belonging to His Majesty, or any such articles belonging to any soldier, militiaman or deserter as are generally deemed regimental necessaries according to the custom of the army; or,

(b) **Changing the colour.**—Causes the colour of such clothing or articles to be changed; or,

(c) **Receiving provisions from soldier.**—Exchanges, buys or receives from any soldier or militiaman, any provisions, without leave in writing from the officer commanding the regiment or detachment to which such soldier belongs;

Offence.—Penalty.—Is guilty of an offence punishable on indictment or on summary conviction and liable on conviction on indictment to five years' imprisonment, and on summary conviction before two justices to a penalty not exceeding forty dollars, and not less than twenty dollars and costs, and, in default of payment, to six months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 390.

439. Receiving necessaries from seamen or marines.—Every one who buys, exchanges, or detains, or otherwise receives from any seaman or marine, upon any account whatsoever, or has in his possession any arms or clothing, or any articles, belonging

to any seaman, marine or deserter, as are generally deemed necessaries according to the custom of the navy, is guilty of an offence punishable on indictment or on summary conviction and liable on conviction on indictment to five years' imprisonment, and on summary conviction before two justices to a penalty not exceeding one hundred and twenty dollars, and not less than twenty dollars and costs, and in default of payment to six months' imprisonment. 55-56 V., c. 29, s. 391.

440. Receiving seaman's property unless in ignorance or on sale by authority.—Every one who detains, buys, exchanges, takes on pawn or receives, from any seaman or any person acting for a seaman, any seaman's property, or solicits or entices any seaman, or is employed by any seaman to sell, exchange or pawn any seaman's property, unless he acts in ignorance of the same being a seaman's property, or of the person with whom he deals being or acting for a seaman, or unless the same is sold by the order of the Admiralty or commander in chief, is guilty of an offence punishable on indictment or on summary conviction and liable on conviction on indictment to five years' imprisonment, and on summary conviction for a first offence to a penalty not exceeding one hundred dollars; and on summary conviction for a second offence, to the same penalty, or in the discretion of the justice, six months' imprisonment, with or without hard labour. 55-56 V., c. 29, s. 392.

441. Not justifying possession of same.—Every one in whose possession any seaman's property is found who does not satisfy the justice before whom he is taken or summoned that he came by such property lawfully is liable, on summary conviction, to a fine of twenty-five dollars. 55-56 V., c. 29, s. 393.

442. Cheating at play.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud any person, cheats in playing at any game or in holding the stakes, or in betting on any event. 55-56 V., c. 29, s. 395.

To constitute the offence of cheating at common law it is necessary to show (1) that the act has been completed, (2) that there has been injury to the individual. R. v. Vreones (1891), 1 Q. B., 360.

443. Pretending to practise witchcraft, etc.—Every one is guilty of an indictable offence and liable to one year's imprisonment who pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in any occult or crafty science, to discover where or in what manner any goods or chattels

supposed to have been stolen or lost may be found. 55-56 V., c. 29, s. 396.

Deception is an essential element of the offence of "undertaking to tell fortunes," and to uphold a conviction for that offence there must be evidence upon which it may be reasonably found that the accused was asserting or representing, with the intention that the assertion or representation should be believed, that he had the power to tell fortunes, with the intent in so asserting or representing of deluding and defrauding others. R. v. Marcott (1901), 4 C. C. C., 437.

See also R. v. Entwistle (1899), 1 Q. B., 846; Monk v. Hilton, 2 Ex. D., 268.

Where on a prosecution for undertaking to tell fortunes, it appears that the prediction of the future for which payment was made was expressly stipulated to be only a delineation made pursuant to rules laid down in published works on palmistry, an acquittal should be directed, as the contract negatives any intention to deceive. R. v. Chilcott (1902), 6 C. C. C., 27.

444. **Conspiracy to defraud.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who conspires with any other person, by deceit or falsehood or other fraudulent means, to defraud the public or any person, ascertained or unascertained, or to affect the public market price of stocks, shares, merchandise, or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretense as hereinbefore defined. 55-56 V., c. 29, s. 394.

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. But where two agree to carry it into effect the very plot is an act in itself and is the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, punishable if for a criminal object or for the use of criminal means.

A conspiracy must necessarily be the offence of two or more persons. Mulcahy v. R. (1868), L. R., 3 H. L., 306.

Therefore, one person alone cannot be convicted of the offence unless he be indicted for conspiring with other persons unknown to the jurors, or unless he is charged with conspiring with others, who have not appeared, or who have died since the commission of the offence. R. v. Kinnersley (1718), 1 Str., 193; R. v. Nicholls (1745), 2 Str., 1227.

Where two persons are indicted on a charge of conspiracy and are tried together, both must be convicted or both acquitted. R. v. Manning (1883), L. R., 12 Q. B. D., 241.

A conspiracy to defraud is indictable, although the conspirators have been unsuccessful in carrying out the fraud. R. v. Frawley (1894), 1 C. C. C., 253.

Where an accused person is indicted for, and found guilty of, obtaining money under false pretences it is immaterial that with regard to the same act he might have been indicted with another person for conspiracy to defraud. R. v. Clark (1892), 2 B. C. R., 191.

The offence of conspiracy is complete when the unlawful agreement is entered into between the parties, and it is not necessary that any act should be done in pursuance of the agreement. Nor does the fact that the object

of the agreement was the commission of a civil wrong only change the criminal nature of the offence of conspiring. R. v. Defries and R. v. Tamblyn (1894), 1 C. C. C., 207; O'Connell v. R. (1844), 11 Cl. & F., 155.

One conspirator may be indicted and convicted without joining the others, although living and within the jurisdiction. R. v. Frawley (1894), 1 C. C. C., 253.

In a charge of conspiracy, it is not necessary to prove that the parties came together and actually agreed in terms to carry out their common design; but the jury may group the detached acts of the parties severally, and view them as indicating a concerted purpose on the part of all as proof of the alleged conspiracy. The bare consulting of those who merely deliberate in regard to the proposed conspiracy, although they may not agree on a plan of action, is of itself an overt act. R. v. Connolly & McGreevy (1894), 1 C. C. C., 468.

When the existence of the common design on the part of the defendants has been proved, evidence is then properly receivable as against both of what was said or done by either in furtherance of the common design; the same rule will apply to admit evidence of what was said or done in furtherance of the common design by a conspirator not charged, as evidence against those who are charged, after proof of the existence of the common design on the part of the defendants with such conspirator. R. v. Connolly & McGreevy, supra.

The venue in an indictment for conspiracy may be laid either where the agreement was entered into or where any overt act was done in pursuance of the common design. Any such overt act is to be viewed as a renewal or continuation of the original agreement made by all of the conspirators, and, if done in another jurisdiction than that in which the original concerted purpose was formed, jurisdiction will then attach to authorize the trial of the charge in such other jurisdiction. R. v. Connolly & McGreevy, supra.

Upon a charge of conspiracy to defraud, attempts made by the accused to defraud persons other than those mentioned in the indictment may be proved; and the production of a contract in writing which constitutes elements of truth of the conspiracy is no bar to supplementary parol evidence of false representations made either before or after this contract. R. v. Sheppard (1893), R. J. Q., 4 Q. B., 470.

The fact that a person thought that he himself was defrauding others will not affect his right to prosecute those with whom he thought he was conspiring, but who were in reality defrauding him. R. v. Hudson (1860), Bell's C. C., 263.

An indictment will lie for a conspiracy to obtain money as a reward for an appointment to an office under the Government. R. v. Pollman (1809), 2 Campbell, 229.

An information laid in general terms charging that the accused did in specified years "conspire with others' whose names are unknown, by deceit, falsehood and other fraudulent means to defraud the public," sufficiently states an offence under this section to give jurisdiction to a magistrate to hold a preliminary enquiry. R. v. Phillips (1906), 11 C. C. C., 89.

See also R. v. Seward (1834), 1 A. & E., 706; R. v. Cooke, (1826), 5 B. & C., 538; R. v. Kenrick (1843), 5 Q. B., 49; R. v. Fellowes (1859), 19 U. C. Q. B., 48; R. v. McCullough & McGillis (1900), 21 C. L. T., 306; R. v. Madden & Bowerman (1894), 30 C. L. J., 765; R. v. Williams (1897), 28 O. R., 583; R. v. Hammond (1898), 1 C. C. C., 373; R. v. de Berenger (1814), 3 M. & S., 68; R. v. Aspinall (1876), L. R., 2 Q. B. D., 59; R. v. Brown (1858), 7 Cox C. C., 442; R. v. Warburton (1870), L. R., 1 C. C. R., 274; R. v. Gill (1818), 2 B. & Ald., 204; R. v. Johnston (1902), 6 C. C. C., 232; R. v. Carlin (1903), 6 C. C. C., 365 and 507; R. v. Sinclair (1906), 12 C. C. C., 20.

ROBBERY AND EXTORTION.

445. Robbery defined.—Robbery is theft accompanied with violence or threats of violence to any person or property used to extort the property stolen, or to prevent or overcome resistance to its being stolen. 55-56 V., c. 29, s. 397.

At common law, "robbery is larceny committed by violence, from the person of one put in fear." Bishop.

To constitute robbery, there must be either some act of direct violence, or some demonstration from which physical injury to the person robbed may be reasonably apprehended. 2 Bishop's Cr. Law, 967.

The fear of physical ill must come before the relinquishment of the property to the thief, and not after; else the offence is not robbery. R. v. Harman, 2 East P. C., 736; 1 Hale, 534.

Where the accused had threatened to bring a mob from Birmingham (then in a state of riot), and burn the prosecutor's house if he did not give them money, and the latter did so under fear of this threat, it was held that they had committed robbery. R. v. Astley (1792), 2 East P. C., 729; R. v. Brown (1780), 2 East P. C., 731.

Suddenly snatching a bundle from the hands of a boy, as the accused ran past him, is only theft, there not being a sufficient degree of violence to constitute robbery. R. v. Macauley (1783), 1 Leach C. C., 287; R. v. Steward (1690), 2 East P. C., 702.

But snatching an article from a person will constitute robbery if the thing in question is so attached to his person or clothes as to afford resistance. R. v. Mason (1820), R. & R., 419.

To snatch a diamond from the head-dress of a lady with such force as to remove it with part of the hair from the place in which it was fixed, is sufficient violence to constitute an offence under this section. R. v. Moore (1783), 1 Leach C. C., 290.

In order to constitute the offence of robbery, the article need not actually be taken from the owner's person; it is sufficient if through violence or threats thereof it is taken in his presence. R. v. Francis (1735), 2 Str. 1015.

Highway robbery is robbery committed in an open street, road or square, and force must be used with intent to overpower the person and prevent his resistance. R. v. Gnosil (1824), 1 Car. & P., 504.

Snatching property from the hand of another is not sufficient force to constitute highway robbery. R. v. Baker (1783), 1 Leach C. C., 324.

446. Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped who,—

(a) **Robbery with violence.**—Robs any person and at the time of, or immediately before or immediately after such robbery, wounds, beats, strikes, or uses any personal violence to, such person; or,

(b) **Joint robbery.**—Being together with any other person or persons robs, or assaults with intent to rob, any person; or,

(c) **Robbery while armed.**—Being armed with an offensive weapon or instrument robs or assaults with intent to rob, any person. 55-56 V., c. 29, s. 398.

447. Penalty for robbery.—Every one who commits robbery

is guilty of an indictable offence and liable to fourteen years' imprisonment. 55-56 V., c. 29, s. 399.

448. Assault with intent to rob.—Every one who assaults any person with intent to rob him is guilty of an indictable offence and liable to three years' imprisonment. 55-56 V., c. 29, s. 400.

Section 949 provides that when the complete offence is charged but not proved and the evidence establishes an attempt to commit the offence, the accused may be convicted of such attempt and punished accordingly.

An assault with intent to rob is a form of attempt to rob.

If a count for assault with intent to rob is joined with a count for robbery the prosecutor cannot proceed with both and is put to his election. R. v. Gough (1831), 1 M. & Rob., 71.

Assaulting and threatening to charge an infamous crime with intent thereby to extort money, is an assault with intent to rob. R. v. Stringer (1842), 2 Moody C. C., 261.

No actual demand of money is required to make out the offence. R. v. Trusty (1783), 1 East P. C., 418.

449. Stopping the mail with intent to rob.—Every one is guilty of an indictable offence and liable to imprisonment for life, or for any term not less than five years, who stops a mail with intent to rob or search the same. 55-56 V., c. 29, s. 401.

The property of any mailable matter may be laid in the Postmaster General.

450. Compelling execution of document by force with intent to defraud.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to defraud or injure, by unlawful violence to, or restraint of the person of another, or by the threat that either the offender or any other person will employ such violence or restraint, unlawfully compels any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security. 55-56 V., c. 29, s. 402.

A document as follows:—"I hereby agree to pay you £100 on the 27th inst., to prevent any action against me" has been held to be a valuable security. R. v. John (1875), 13 Cox C. C., 100.

451 Letters demanding property with menaces.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security or other valuable thing. 55-56 V., c. 29, s. 403.

Whether or not there was reasonable or probable cause is a question of fact, and the onus is on the prosecution to prove the want of it. R. v. Collins (1896), 1 C. C. C., 48.

The words "without reasonable or probable cause" have reference to the state of the prisoner's mind when making the demand. R. v. Miard (1844), 1 Cox C. C., 22; R. v. Chalmers (1867), 10 Cox C. C., 450.

If the money were actually due, the demand of same with menaces would not come within this section. R. v. Johnson (1857), 14 U. C. Q. B., 569.

If the threat be to accuse of a crime, it is no less an offence because the person threatened was really guilty, for, if he was guilty, the accused ought to have prosecuted him for it, and not have extorted money from him. R. v. Gardner (1824), 1 C. & P., 479; R. v. Richards (1868), 11 Cox C. C., 43; R. v. Hamilton (1843), 1 C. & K., 212.

It is sufficient to prove that the letter is in the handwriting of the accused, and that it came to the prosecution in the ordinary course, through the post. R. v. Jepson (1798), 2 East P. C., 1116; R. v. Hemming (1799), 2 East P. C., 1115.

If a person has placed the letter in a place where he knew that the person whom he wishes to receive it would come, or where it has been picked up by another person and then given to the former, he is guilty of sending the letter or causing it to be received under this section. Thus, where a person dropped the letter in a vestry which was frequented by the prosecutor every Sunday morning, and was there picked up by the sexton and given to him, it was held that there had been a sufficient sending of the letter. R. v. Lloyd (1767), 2 East P. C., 1122; R. v. Wagstaff (1819), R. & R., 398.

452. Demanding with intent to steal.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with menaces, demands from any person either for himself or for any other person, anything capable of being stolen with intent to steal it. 55-56 V., c. 29, s. 404.

A demand of money from a hotelkeeper under threat of prosecution for selling intoxicating liquor in prohibited hours contrary to a liquor license statute if the demand be not complied with, may constitute the offence under this section of demanding money with menaces with intent to steal the same.

Such a threat of prosecution made to a licensee, who to the knowledge of the prisoner had been previously convicted of an offence under the Liquor License laws and who was therefore liable to a cancellation of his license, as well as to heavy penalties, is such a threat as is calculated to do him harm and as would be likely to affect any man in a sound and healthy state of mind, and any such threat is an illegal menace. R. v. Gibbons (1898), 1 C. C. C., 340.

Demanding with menaces money actually due is not a demand with intent to steal. R. v. Johnson (1857), 14 U. C. Q. B., 569.

Two or more persons may be jointly convicted of extortion when they act together and concur in the demand. R. v. Tisdale (1860), 20 U. C. Q. B., 272.

For the purpose of proving the "intent to steal" it is sufficient if an inference of such intent is deducible from the acts and conduct of the prisoner as shewn by the evidence. The question of "intent to steal" in a charge of demanding with menaces and with such intent is one entirely for the jury, and cannot be determined as a question of law by the judge. R. v. Gibbons (supra).

To demand and obtain possession of goods from a debtor for the purpose of holding them as security for a debt actually owing, is not a de-

mand with menaces made with "intent to steal," although such possession is obtained by means of an unjustified threat of the debtor's arrest made by the creditor's agent without any honest belief that the debtor was liable to arrest. R. v. Lyon (1898), 2 C. C. C., 242.

453. Penalty.—Intent to extort.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to extort or gain anything from any person,—

(a) **Accusation of crime.**—Accuses or threatens to accuse either that person or any other person, whether the person accused or threatened with accusation is guilty or not, of

(i) any offence punishable by law with death or imprisonment for seven years or more,

(ii) any assault with intent to commit a rape, or any attempt or endeavour to commit a rape, or any indecent assault,

(iii) carnally knowing or attempting to know any child so as to be punishable under this Act.

(iv) any infamous offence, that is to say, buggery, an attempt or assault with intent to commit buggery, or any unnatural practice, or incest,

(v) counselling or procuring any person to commit any such infamous offence; or,

(b) **Threats.**—Threatens that any person shall be so accused by any other person; or,

(c) **Threatening document.**—Causes any person to receive a document containing such accusation or threat, knowing the contents thereof;

Compelling execution of document.—Or who by any of the means aforesaid compels or attempts to compel any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security. 55-56 V., c. 29, s. 405.

The fact that the person accused, or threatened to be accused, was in reality guilty of the offence so charged, would be no justification if the intent of the threat or accusation was to extort or gain any thing. R. v. Cracknell (1866), 10 Cox C. C., 408; R. v. Richards (1868), 11 Cox C. C., 43; R. v. Gardner (1824), 1 C. & P., 479.

A person who lays an information against another for rape with the intent of thereby extorting money or other property from the person against whom the charge is made, thereby "accuses" such person within the meaning of this section. R. v. Kempel (1900), 3 C. C. C., 481.

A menace such as will operate upon and alarm the mind of a firm man is within this section. R. v. McDonald (1892), 13 C. L. T., 17.

It is for the jury and not for the Court to determine whether or not a letter is a threatening one within the meaning of the section, and this point should not be withdrawn from their consideration unless the letter is such that it could not by any possible construction, be held to contain a threat.

R. v. Carruthers (1844), 1 Cox C. C., 138.

See also R. v. Miard (1844), 1 Cox C. C., 22; R. v. Chalmers (1867), 10 Cox C. C., 450.

The intent of the accused in making a threat may be inferred from his conduct even against his declaration at the time. R. v. Menage (1862), 3 F. & F., 310.

See also R. v. Warren Wilson (1902), 6 C. C. C., 131.

454. **Penalty.**—Every one is guilty of an indictable offence and liable to imprisonment for seven years who,—

(a) **Intent to extort.—Accusation of crime.**—With intent to extort or gain anything from any person accuses or threatens to accuse either that person or any other person of any offence other than those specified in the last section, whether the person accused or threatened with accusation is guilty or not of that offence; or,

(b) **Threats.**—With such intent as aforesaid, threatens that any person shall be so accused by any person; or,

(c) **Threatening document.**—Causes any person to receive a document containing such accusation or threat, knowing the contents thereof;

Compelling execution of document.—Or who by any of the means aforesaid, compels or attempts to compel any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into, or used or dealt with as a valuable security. 55-56 V., c. 29, s. 406.

The "offence" of which a person is accused or threatened to be accused with the intent to extort money from him may be an offence under a provincial law only. R. v. Dixon (1895), 2 C. C. C., 589.

Where, in a charge of sending a threatening letter to a person with intent to extort money, it is proved that the accused had stated that he had written a letter to such person, and that he had stated its purport in language to the like effect as the threatening letter, it is not error for the Court to admit the threatening letter in evidence without further proof of the handwriting, and to submit to the jury for comparison with an exhibit, already in evidence, admittedly written by the accused. A jury may properly make a comparison of doubtful or disputed handwriting, and draw their own conclusion as to its authenticity, if the admittedly genuine handwriting and the disputed handwriting are both in evidence for some purpose in the case, although no witness was called to prove the handwriting to be the same in both. R. v. Dixon (1897), 3 C. C. C., 220.

On an indictment for publishing certain matter with intent to extort money, it is not necessary that the matter in question should be libellous. R. v. Coghlan (1865), 4 F. & F., 316.

See also R. v. Ogden (1863), L. & C., 288; R. v. Cornell (1904), 8 C. C. C., 416.

BURGLARY AND HOUSEBREAKING.

455. **Breaking place of worship and committing offence.**—Every one is guilty of an indictable offence and liable to four-

teen years' imprisonment who breaks and enters any place of public worship and commits any indictable offence therein, or who, having committed any indictable offence therein, breaks out of such place. 55-56 V., c. 29, s. 408.

456. Breaking with intent to commit offence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who breaks and enters any place of public worship, with intent to commit any indictable offence therein. 55-56 V., c. 29, s. 409.

As to what is a place of worship, see R. v. Wheeler (1829), 3 C. & P., 585; R. v. Evans (1842), 1 Car. & M., 298.

457. Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for life who,—

(a) **Breaking dwelling by night.**—Breaks and enters a dwelling-house by night with intent to commit any indictable offence therein; or,

(b) **Breaking out of dwelling by night.**—Breaks out of any dwellin-house by night with intent to commit any indictable offence therein, or after having entered such dwelling-house, either by day or by night, with intent to commit an indictable offence therein.

2. **Committing the offence when armed.**—Every one convicted of an offence under this section who when arrested, or when he committed such offence, had upon his person any offensive weapons, shall, in addition to the imprisonment above prescribed, be liable to be whipped. 63-64 V., c. 46, s. 3.

The expressions "night" or "night-time" mean the interval between nine o'clock in the afternoon and six o'clock in the forenoon on the following day. Section 2 (23).

In order to constitute the offence of burglary there must be a breaking and an entry in the night, and the breaking must be such as will afford an opportunity of entering. R. v. Hughes (1785), 1 Leach C. C., 452.

But the breaking and the entry may be on different nights, provided that the breaking be done with intent to enter, and that the subsequent entrance be made with intent to commit an indictable offence. R. v. Smith (1820), R. & R., 417.

The Breaking and Entering.—If a man enter into a house by a door or window, which he finds open, or through a hole which was made there before, and steal goods; or draw goods out of a house through such door, window, or hole, he will not be guilty of burglary. 4 Black Com., 226.

Though a thief enters a house at night, through an open door or window, yet if, when within, he breaks or opens an inner door with intent to commit an indictable offence, he is guilty of burglary. R. v. Johnson (1786), 2 East P. C., 488.

Obtaining an entrance by means of a chimney is a breaking in of a dwelling house. R. v. Brice (1821), R. & R., 450.

But entering by a hole, made for the purpose of admitting light, is not a sufficient breaking and entering to constitute the crime. R. v. Spriggs (1834), 1 M. & Rob., 357; R. v. Lewis (1827), 2 C. & P., 628.

Lifting the flap of a cellar usually kept down by its own weight, is a sufficient breaking to constitute burglary. R. v. Russell (1781), 1 Moody C. C., 377; R. v. Browne (1799), 2 East P. C., 487.

The same rule applies to the raising of a window which is kept down by its own weight alone. R. v. Haines (1821), R. & R., 451; R. v. Hyams (1836), 8 C. & P., 441.

If a person commits an indictable offence in a house, and breaks out of it in the night-time, he is guilty of burglary, although he may have been lawfully in the house. R. v. Wheeldon (1839), 8 C. & P., 747.

To effect an entrance to a dwelling-house by further lifting a partly open window is not a "breaking" within this section. R. v. Burns (1903), 7 C. C. C., 95.

As to what is a dwelling-house, see:—R. v. Thompson (1787), 2 Leach C. C., 498; R. v. Harris (1795), 2 Leach C. C., 808; R. v. Martin (1806), R. & R., 108; R. v. Flannagan (1810), R. & R., 187.

As to evidence from which it may be inferred whether or not the person who entered and broke in, did so with the intent to commit some indictable offence, see R. v. Knight (1781), 2 East P. C., 510; R. v. Donnelly (1816), R. & R., 310; R. v. Furnival (1821), R. & R., 445.

If on an indictment under this section it is not proved that the breaking and entering were in the night-time, the accused may be convicted of housebreaking under secs. 458 and 459; or if the breaking and entering be not proved, he may, under sec. 380, be convicted of stealing in a dwelling-house, provided that the value of the property stolen is at least $25.00, unless the accused has by threats put anyone in the house in bodily fear, in which case he may be convicted under sec. 380 irrespective of the value of the property stolen; or, if the offence of the person so indicted for burglary, is not provided for by sec. 380, he may be convicted of simple theft. See sec. 951, which deals with the divisibility of courts.

458. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(a) **Breaking dwelling by day.**—Breaks and enters any dwelling-house by day and commits any indictable offence therein; or,

(b) **Breaking out of dwelling by day.**—Breaks out of any dwelling-house by day after having committed any indictable offence therein. 55-56 V., c. 29, s. 411.

The principal distinction between this offence and that of burglary, is that housebreaking is usually applied to the offence committed by day and burglary to that committed by night. But if it be proved on an indictment for housebreaking that the offence was committed by night, and that it is therefore burglary, the accused may notwithstanding be convicted of housebreaking. R. v. Robinson (1817), R. & R., 321.

459. Breaking with intent to commit offence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, by day, breaks and enters any dwelling-house with intent to commit any indictable offence therein. 55-56 V., c. 29, s. 412.

A person indicted under this section may be convicted under sec. 380, or he may be convicted of simple theft; or he may be convicted of an attempt to commit the offence specified in the indictment.

460. Breaking shop, etc., and committing indictable offence.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, either by day or night, breaks and enters and commits any indictable offence in a school-house, shop, warehouse or counting-house, or any building within the curtilage of a dwelling-house, but not so connected therewith as to form part of it under the provisions hereinbefore contained. 55-56 V., c. 29, s. 413.

See R. v. Carter (1843), 1 C. & K., 173.

461. Breaking shop, etc., with intent.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, either by day or night, breaks and enters any of the buildings mentioned in the last preceding section with intent to commit any indictable offence therein. 55-56 V., c. 29, s. 414.

462. Being found in dwelling house at night.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who unlawfully enters, or is in, any dwelling-house by night with intent to commit any indictable offence therein. 55-56 V., c. 29, s. 415.

463. Penalty.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who is found,—

(a) **Armed with intent to break by day.**—Armed with any dangerous or offensive weapon or instrument by day, with intent to break or enter into any dwelling-house, and to commit any indictable offence therein; or,

(b) **With intent to break by night.**—Armed as aforesaid by night, with intent to break into any building and to commit any indictable offence therein. 55-56 V., c. 29, s. 416.

464. Penalty.—Every one is guilty of an indictable offence and liable to five years' imprisonment who is found,—

(a) **Having housebreaking instruments by night.**—Having in his possession by night, without lawful excuse, the proof of which shall lie upon him, any instrument of housebreaking; or,

(b) **By day.**—Having in his possession by day any such instrument with intent to commit any indictable offence; or,

(c) **Disguised by night.**—Having his face masked or blackened, or being otherwise disguised, by night, without lawful excuse, the proof whereof shall lie on him; or,

(d) **Disguised by day.**—Having his face masked or blackened, or being otherwise disguised by day, with intent to commit any indictable offence. 55-56 V., c. 29, s. 417.

The possession of a crowbar or other implement of housebreaking by

one of two persons acting in concert will be the possession of both. R. v. Thompson (1869), 11 Cox C. C., 362.

465. Punishment after previous conviction.—Every one who, after a previous conviction for any indictable offence, is convicted of an indictable offence specified in this Part for which the punishment on a first conviction is less than fourteen years' imprisonment is liable to fourteen years' imprisonment. 55-56 V., c. 29, s. 418.

Sections 851, 963 and 964 relate respectively to the form of indictment and the procedure to be followed when a previous conviction is charged.

FORGERY AND PREPARATION THEREFOR.

466. Definition.—Forgery is the making of a false document, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine, to the prejudice of any one whether within Canada or not, or that some person should be induced by the belief that it is genuine, to do or refrain from doing anything, whether within Canada or not.

2. **Making false document.**—Making a false document includes altering a genuine document in any material part, or making any material addition to it or adding to it any false date, attestation, seal or other thing which is material, or making any material alteration in it, either by erasure, obliteration, removal or otherwise.

3. **When forgery complete.**—Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, though the offender may not have intended that any particular person should use or act upon it as genuine, or be induced, by the belief that it is genuine, to do or refrain from doing anything.

4. **False document may be incomplete.**—Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding in law, if it be so made and is such as to indicate that it was intended to be acted on as genuine. 55-56 V., c. 29, s. 422.

To forge is, in its general sense, to conterfeit, to falsify; though to convict the person who made the false instrument of a crime the intent to defraud must be made to appear. R. v. Dunlop (1857), 15 U. C. Q. B., 118.

The making of a false document includes the alteration of it, for the alteration of a genuine instrument makes it a false instrument. R. v. Bail (1884), 7 O. R., 228.

To constitute the crime of forgery it is not necessary that the writing charged to be forged should be such as would be effectual if it were a true and genuine writing. R. v. Portis (1876), 40 U. C. Q. B., 214.

A person may be guilty of forgery although the note in question was found in his possession when he was arrested, and was never in fact uttered by him. R. v. Crocker (1805), 2 Leach C. C., 987.

A person making a false deed in his own name may be guilty of forgery. R. v. Ritson (1869), L. R., 1 C. C. R., 200.

If a person whose name is the same as that of the payee of a cheque, receives it by mistake, and knowing that he is not the real payee, endorses it for the purpose of obtaining possession of the money, he is guilty of forgery. Mead v. Young (1790), 4 D. & E., 28.

The fraudulent alteration of the material part of a deed is forgery. R. v. Elsworth (1780), 2 East P. C., 986.

Altering the date of a bill of exchange after acceptance, and for the purpose of accelerating the time when its payment is due, is forgery. Master v. Miller (1792), 1 Anstr. 225; R. v. Atkinson (1837), 7 C. & P., 669.

The indorsement of a fictitious name on a bill of exchange for the purpose of giving it currency is forgery. R. v. Wilks (1767), 2 East P. C., 957, R. v. Backler (1831), 5 C. & P., 118; R. v. King (1832), 5 C. & P., 123.

The fact that the instrument in question is so imperfect that it would have no legal effect if it were genuine will not alter the liability of a person accused of having forged the same. R. v. Lyon (1813), R. & R., 255; R. v. McIntosh (1800), 2 East P. C., 942.

If a cheque is given to a person with a certain authority, the agent is confined strictly within the limits of that authority, and if he choose to alter it, the crime of forgery is committed. If a blank cheque be given to him with a limited authority to complete it, and he fill it up with an amount different from the one he was directed to insert, and if, after the authority was at end, he fill it up with any amount whatever, that too would be clearly forgery. R. v. Bateman (1845), 1 Cox C. C., 186; R. v. Hart (1836), 7 C. & P., 652; Wright's Case, 1 Lewin C. C., 135.

A person who, having an order for delivery of wheat for the support of poor persons, is guilty of forgery if, with intent to defraud, he materially alters the order so as to increase the quantity of wheat which may be obtained thereunder. R. v. Campbell (1859), 18 U. C. Q. B., 416.

A person who, having a power of attorney from another, fraudulently conceals that fact, and, assuming to be the principal, executes a deed in the name of and as representing another person, with intent to defraud, commits forgery. R. v. Gould (1869), 20 U. C. C. P., 159.

Where a fraudulent conspiracy is entered into between two persons, in pursuance of which one of them opens an account in a bank in a fictitious name, and gives to the other a cheque drawn in a fictitious name, for which the latter knows there are no funds, and in furtherance of the conspiracy the same is negotiated by the payee by obtaining another bank, which thinks it is genuine, to cash it, the cheque is a false document both under the Code and at common law. Re Murphy (1894), 2 C. C. C., 562.

When documents filed as exhibits in a civil suit form the subject matter of indictment for forgery and uttering, they may be impounded upon the application of the Attorney-General acting for the King. Couture v. Fortier (1895), R. J. Q., 7 S. C., 197.

A witness who testifies that the forged signatures were written by the accused, is not corroborated in a "material particular by evidence implicating the accused," by proof that certain other signatures were in the same handwriting, when the only evidence shewing that the latter's signatures were written by the accused was the testimony of the same witness who had testified to the handwriting of the signatures first examined. R. v. McBride (1895), 2 C. C. C., 544.

See also R. v. Giles (1856), 6 U. C. C. P., 84.

When a document is alleged to have been forged, it must be proved that the handwriting was intended to represent that of some person whose it is proved not to be, or that it was intended as the handwriting of a person who never existed. R. v. Sponsonby (1784), 2 East P. C., 996; R. v. Downes (1789), 2 East P. C., 996 and 997.

The evidence of a person who is expert in the detection of forgeries is admissible to prove that the writing is in a feigned hand, although he never saw the person write. R. v. Blackler (1831), 5 C. & P., 118; Goodtitle v. Braham (1792), 4 D. & E., 497.

The uttering of a false letter of introduction, the signature to which is forged, is an indictable offence under this section if the person uttering same knows it to be a false document, and to have been made with intent that it should be acted upon as genuine to the prejudice of any one. Re Abeel (1904), 8 C. C. C., 189.

Unless the forged instrument has been lost or destroyed, it must be produced to establish a prima facie case of forgery. Re Harsha (1906), 10 C. C. C., 433

See also R. v. Griffiths (1858), 4 U. C. L. J., 240; R. v. Craig (1857), 7 U. C. C. P., 239; R. v. McNevin (1867), 2 R. L., 711; R. v. Hawkes (1838), 2 Moody C. C., 60; R. v. Curry (1841), 2 Moody C. C., 218; R. v. Howie (1869), 11 Cox C. C., 220; R. v. Fitchie (1857), 26 L. J. M. C., 90; R. v. Jones (1785), 1 Leach, 405; R. v. Thomas (1837), 7 C. & P., 851; R. v. Howley (1862), L. & C., 159; R. v. Atkinson (1841), 2 Moody C. C., 215; R. v. Rowe (1903), 8 C. C. C., 28.

467. Uttering forged documents.—Every one is guilty of an indictable offence who, knowing a document to be forged, uses, deals with, or acts upon it, or attempts to use, deal with, or act upon it, or causes or attempts to cause any person to use, deal with, or act upon it, as if it were genuine, and is liable to the same punishment as if he had forged the document.

2. **Wherever forged.**—It is immaterial where the document was forged. 55-56 V., c. 29, s. 424.

Upon an indictment under this section for passing a forged note, proof of the fact that the accused had uttered other forged notes would raise a presumption that he knew that the one in question was forged. R. v. Moore (1858), 1 F. & F., 73; R. v. Salt (1862), 3 F. & F., 834; R. v. Coleclough (1882), 15 Cox C. C., 92; R. v. Foster (1855), 24 L. J., M. C., 134.

The mere showing of a forged receipt to a person with whom the accused is claiming credit for it, is an uttering, even though the accused refuses to part with possession of the receipt. R. v. Radford (1845), 1 Cox C. C., 168.

Delivering a box containing forged stamps to the accused's own servant, in order that he may carry them to an inn to be forwarded by a carrier to a customer, is an uttering. R. v. Collicott (1812), R. & R., 212.

See also Couture v. Fortier (1895), R. J. Q., 7 S. C., 197.

468. Forgery.—Every one who commits forgery of,—

(a) **Public seal.**—Any document having impressed thereon or affixed thereto any public seal of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possession or colony of His Majesty; or,

(b) **Signature of Governor.**—Any document bearing the signature of the Governor General, or of any administrator, or of any deputy of the Governor, or of any lieutenant-governor or any one at any time administering the government of any province of Canada; or,

(c) **Documentary title.**—Any document containing evidence of, or forming the title or any part of the title to, any land or hereditament, or to any interest in or to any charge upon any land or hereditament, or evidence of the creation, transfer or extinction of any such interest or charge; or,

(d) **Entry in register.**—Any entry in any register or book, or any memorial or other document made, issued, kept or lodged under any Act for or relating to the registering of deeds or other instruments respecting or concerning the title to or any claim upon any land or the recording or declaring of titles to land; or,

(e) **Registration document.**—Any document required for the purpose of procuring the registering of any such deed or instrument or the recording or declaring of any such title; or,

(f) **Document evidence of registration.**—Any document which is made, under any Act, evidence of the registering or recording or declaring of any such deed, instrument or title; or,

(g) **Affecting the title.**—Any document which is made by any Act evidence affecting the title to land; or,

(h) **Notarial act.**—Any notarial act or document or authenticated copy, or any procès-verbal of a surveyor or authenticated copy thereof; or,

(i) **Register of births, deaths etc.**—Any register of births, baptisms, marriages, deaths or burials authorized or required by law to be kept, or any certified copy of any entry in or extract from any such register; or,

(j) **Copy of register.**—Any copy of any such register required by law to be transmitted by or to any registrar or other officer; or,

(k) **Will or probate.**—Any will, codicil or other testamentary document, either of a dead or living person, or any probate or letters of administration, whether with or without the will annexed; or,

(l) **Transfer of government stock.**—Any transfer or assignment of any share or interest in any stock, annuity or public fund of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possession or colony of His Majesty, or of any foreign state or country, or receipt or certificate for interest accruing thereon; or,

(m) **Transfer of company stock.**—Any transfer or assignment of any share or interest in the debt of any public body, company or society, British, Canadian or foreign, or of any share or interest in the capital stock of any such company or society, or receipt or certificate for interest accruing thereon; or,

(n) **Transfer of grant as scrip.**—Any transfer or assignment of any share or interest in any claim to a grant of land from

the Crown, or to any scrip or other payment or allowance in lieu of any such grant of land; or,

(o) **Power of attorney**.—Any power of attorney or other authority to transfer any interest or share hereinbefore mentioned, or to receive any dividend or money payable in respect of any such share or interest; or,

(p) **Entry evidence of stock**.—Any entry in any book or register, or any certificate, coupon, share, warrant or other document which by any law or any recognized practice is evidence of the title of any person to any such stock, interest or share, or to any dividend or interest payable in respect thereof; or,

(q) **Exchequer bill**.—Any exchequer bill or endorsement thereof or receipt or certificate for interest accruing thereon; or,

(r) **Bank note**.—Any bank note or bill of exchange, promissory note or cheque, or any acceptance, endorsement or assignment thereof; or,

(s) **Scrip**.—Any scrip in lieu of land; or,

(t) **Evidence of title to government debt**.—Any document which is evidence of title to any portion of the debt of any dominion, colony or possession of His Majesty, or of any foreign state, or any transfer or assignment thereof; or,

(u) **Document security for money**.—Any deed, bond, debenture, or writing obligatory, or any warrant, order, or other security for money or payment of money, whether negotiable or not, or endorsement or assignment thereof; or,

(v) **Receipt for money or goods**.—Any accountable receipt or acknowledgement of the deposit, receipt, or delivery of money or goods, or endorsement or assignment thereof; or,

(w) **Shipping document**.—Any bill of lading, charter-party, policy of insurance, or any shipping document accompanying a bill of lading, or any endorsement or assignment thereof; or,

(x) **Warehouse receipt**.—Any warehouse receipt, dock warrant, dock-keeper's certificate, delivery order, or warrant for the delivery of goods, or of any valuable thing, or any endorsement or assignment thereof; or,

(y) **Document used as evidence of right to goods**.—Any other document used in the ordinary course of business as proof of the possession or control of goods, or as authorizing, either on endorsement or delivery, the possessor of such document to transfer or receive any goods;

Penalty.—Is guilty of an indictable offence and liable to imprisonment for life if the document forged purports to be, or was intended by the offender to be understood to be or to be used as genuine. 55-56 V., c. 29, s. 423.

A conviction cannot be made for forgery upon the evidence of one witness unless such witness is corroborated in some material particular by evidence implicating the accused. Section 1002.

Where a prisoner is charged with forgery, by writing three false signatures, as indorsements, on the back of a promissory note, and each of the parties whose signature is thus made to appear, swears that it is not his and is a forgery, there is the corroborative evidence required by sections 1002 of the Crim. Code. R. v. Houle (1905), 12 C. C. C., 57.

In a charge of forgery, it was held that the corroboration must be that of another witness, and not merely the evidence of the same witness on another point. R. v. McBride (1895), 2 C. C. C., 544.

469. Forgery.—Every one who commits forgery of,—

(a) **Property registration.**—Any entry or document made, issued, kept or lodged under any Act for or relating to the registry of any instrument respecting or concerning the title to, or any claim upon, any personal property; or,

(b) **Public register.**—Any public register or book not hereinbefore mentioned appointed by law to be made or kept, or any entry therein;

Penalty.—Is guilty of an indictable offence and liable to fourteen years' imprisonment if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as genuine. 55-56 V., c. 29, s. 423.

470. Forgery.—Every one who commits forgery of,—

(a) **Record of court of justice.**—Any record of any court of justice, or any document whatever belonging to or issuing from any court of justice, or being or forming part of any proceeding therein; or,

(b) **Documentary evidence.**—Any certificate, office copy, or certified copy or other document which, by any statute in force for the time being, is admissible in evidence; or,

(c) **Document issued by court.**—Any document made or issued by any judge, officer or clerk of any court of justice, or any document upon which, by the law or usage at the time in force, any court of justice or any officer might act; or,

(d) **Magistrate, process.**—Any document which any magistrate is authorized or required by law to make or issue; or,

(e) **Entry in register.**—Any entry in any register or book kept, under the provisions of any law, in or under the authority of any court of justice or magistrate acting as such; or,

(f) **Letters patent.**—Any copy of any letters patent, or of the enrolment or enregistration of letters patent, or of any certificates thereof; or,

(g) **License.**—Any license or certificate for or of marriage; or,

(h) **Contract.**—Any contract or document which, either by itself or with others, amounts to a contract, or is evidence of a contract; or,

(i) **Power of attorney.**—Any power or letter of attorney or mandate; or,

(j) **Orders for money or goods.**—Any authority or request for the payment of money, or for the delivery of goods, or of any note, bill or valuable security; or,

(k) **Receipt or discharge.**—Any acquittance or discharge, or any voucher of having received any goods, money, note, bill or valuable security, or any instrument which is evidence of any such receipt; or,

(l) **Documentary evidence.**—Any document to be given in evidence as a genuine document in any judicial proceeding; or,

(m) **Railway ticket.**—Any ticket or order for a free or paid passage on any carriage, tramway or railway, or any steam or other vessel; or,

(n) **Other documents.**—Any document not mentioned in this or the two last preceding sections;

Penalty.—Is guilty of an indictable offence and liable to seven years' imprisonment if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as genuine. 55-56 V., c. 29, s. 423.

471. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, without lawful authority or excuse, the proof whereof shall lie on him,—

(a) **Machinery for exchequer bill paper.**—Makes, begins to make uses or knowingly has in his possession, any machinery or instrument or material for making exchequer bill paper, revenue paper or paper intended to resemble the bill paper of any firm or body corporate, or person carrying on the business of banking; or,

(b) **Engraving for bill or note.**—Engraves or makes upon any plate or material anything purporting to be, or apparently intended to resemble, the whole or any part of any exchequer bill or bank note; or,

(c) **Using the same.**—Uses any such plate or material for printing any part of any such exchequer bill or bank note; or,

(d) **Possessing the same.**—Knowingly has in his possession any such plate or material as aforesaid; or,

(e) **Making exchequer or other bill paper.**—Makes, uses or knowingly has in his possession any exchequer bill paper, revenue paper, or any paper intended to resemble any bill paper of any firm, body corporate, company or person, carrying on the business of

banking, or any paper upon which is written or printed the whole or any part of any exchequer bill, or any bank note; or,

(f) **Engraving for government bond.**—Engraves or makes upon any plate or material anything intended to resemble the whole or any distinguishing part of any bond or undertaking for the payment of money used by any dominion, colony or possession of His Majesty, or by any foreign prince or state, or by any body corporate, or other body of the like nature, whether within His Majesty's dominions or without; or,

(g) **Using the same.**—Uses any such plate or other material for printing the whole or any part of such bond or undertaking; or,

(h) **Possessing the same.**—Knowingly offers, disposes of or has in his possession any paper upon which such bond or undertaking, or any part thereof, has been printed. 55-56 V., c. 29, s. 434.

OFFENCES RESEMBLING FORGERY.

472. Counterfeiting government seals.—Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully makes or who counterfeits any public seal of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possession or colony of His Majesty, or the impression of any such seal, or uses any such seal or impression, knowing the same to be so unlawfully made or counterfeited. 55-56 V., c. 29, s. 425.

473. Counterfeiting seals of courts or registry or burial boards.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who unlawfully makes or who counterfeits any seal of a court of justice, or any seal of or belonging to any registry office or burial board, or the impression of any such seal, or uses any such seal or impression knowing the same to be so unlawfully made or counterfeited. 55-56 V., c. 29, s. 426.

474. Unlawfully printing counterfeit proclamation.—Tendering same in evidence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who prints any proclamation, order, regulation or appointment, or notice thereof, and causes the same falsely to purport to have been printed by the King's Printer for Canada, or the Government printer for any province of Canada, as the case may be, or tenders in evidence any copy of any proclamation, order, regulation or appointment which falsely purports to have been printed as aforesaid, knowing that the same was not so printed. 55-56 V., c. 29, s. 427.

475. Sending telegrams in false names.—Every one is guilty of an indictable offence who, with intent to defraud, causes or procures any telegram to be sent or delivered as being sent by the authority of any person knowing that it is not sent by such authority, with intent that such telegram should be acted on as being sent by that person's authority, and is liable, upon conviction thereof, to the same punishment as if he had forged a document to the same effect as that of the telegram. 55-56 V., c. 29, s. 428.

476. Sending false telegrams.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with intent to injure or alarm any person, sends, causes, or procures to be sent any telegram or letter or other message containing matter which he knows to be false. 55-56 V., c. 29, s. 429.

477. Drawing document without authority.—Every one is guilty of an indictable offence who, with intent to defraud and without lawful authority or excuse, makes or executes, draws, signs, accepts or endorses, in the name or on the account of another person, by procuration or otherwise, any document, or makes use of or utters any such document knowing it to be so made, executed, signed, accepted or endorsed, and is liable to the same punishment as if he had forged such document. 55-56 V., c. 29, s. 431.

As to the definition of document, see sec. 335 (f.)

An indictment may be laid for unlawfully and with intent to defraud signing a promissory note by procuration, although the name signed is the name of a testamentary succession or of an estate in liquidation, but, if the indictment does not disclose the particulars, an order will be made against the Crown to furnish particulars of the names and capacities of the persons representing such estate at the time when the offence is alleged to have been committed, and directing that the defendants be not arraigned until after the particulars have been delivered. R. v. Weir (1899), 3 C. C. C., 155.

A count of an indictment charging the defendants with having, with intent to defraud, unlawfully made use of and uttered a promissory note, alleged to have been made and signed by one of the defendants by procuration without lawful authority or excuse and with intent to defraud, is defective if it does not also allege that the defendants knew it to have been so made and signed.

Such a defect is one of substance and cannot be amended. R. v. Weir (1900), 3 C. C. C., 499.

478. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(a) **Obtaining anything by forged instrument or by probate of forged will.**—Demands, receives, or obtains anything, or causes or procures anything to be delivered or paid to any person, under, upon, or by virtue of any forged instrument knowing the same to be forged, or under, upon, or by virtue of any pro-

bate or letters of administration, knowing the will, codicil or testamentary writing on which such probate or letters of administration were obtained to be forged, or knowing the probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit; or,

(b) **Attempt**.—Attempts to do any such thing as aforesaid. 55-56 V., c. 29, s. 432.

479. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(a) **Counterfeiting stamp**.—Fraudulently counterfeits any stamp, whether impressed or adhesive, used for the purposes of revenue by the Government of the United Kingdom or of Canada, or by the government of any province of Canada, or of any possession or colony of His Majesty, or by any foreign prince or state; or,

(b) **Disposal of same**.—Knowingly sells or exposes for sale, or utters or uses any such counterfeit stamp; or,

(c) **Making, etc., die for same**.—Without lawful excuse, the proof whereof shall lie on him, makes, or has knowingly in his possession, any die or instrument capable of making the impression of any such stamp as aforesaid, or any part thereof; or,

(d) **Removing stamp**.—Fraudulently cuts, tears or in any way removes from any material any such stamp, with intent that any use should be made of such stamp or of any part thereof; or,

(e) **Mutilating stamp**.—Fraudulently mutilates any such stamp with intent that any use should be made of any part of such stamp; or,

(f) **Using stamp fraudulently**.—Fraudulently fixes or places upon any material, or upon any stamp aforesaid, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any other way removed from any other material or out of or from any other stamp; or,

(g) **Erasing marks on stamped material**.—Fraudulently erases, or otherwise, either really or apparently, removes, from any stamped material any name, sum, date, or other matter or thing thereon written, with the intent that any use should be made of the stamp upon such material; or,

(h) **Possessing mutilated or erased stamp**.—Knowingly and without lawful excuse the proof whereof shall lie upon him has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing

has been fraudulently erased or otherwise, either really or apparently, removed; or,

(i) **Counterfeiting Government mark or brand.**—Without lawful authority makes or counterfeits any mark or brand used by the Government of the United Kingdom of Great Britain and Ireland, the Government of Canada, or the Government of any province of Canada, or by any department or officer of any such Government for any purpose in connection with the service or business of such Government, or the impression of any such mark or brand, or sells or exposes for sale or has in his possession any goods having thereon a counterfeit of any such mark or brand knowing the same to be a counterfeit, or affixes any such mark or brand to any goods required by law to be marked or branded other than those to which such mark or brand was originally affixed. 55-56 V., c. 29, s. 435.

480. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(a) **Injuring register of births and deaths.**—Unlawfully destroys, defaces or injures any register of births, baptisms, marriages, deaths or burials required or authorized by law to be kept in Canada, or any part thereof, or any copy of such register, or any part thereof required by law to be transmitted to any registrar or other officer; or,

(b) **Making false entry in same.**—Unlawfully inserts in any such register, or any such copy thereof, any entry, known by him to be false, of any matter relating to any birth, baptism, marriage, death or burial, or erases from any such register or document any material part thereof. 55-56 V., c. 29, s. 436.

A register is none the less defaced or injured because when produced in court the torn part has been pasted in and is as legible as before the offence. R. v. Bowen (1844), 1 Cox C. C., 88.

Where the false entry is actually made on the information of and at the instance of the accused, he is guilty of the offence of inserting the entry in the register and not merely of making a false statement for that purpose. R. v. Mason (1848), 2 C. & K., 622; R. v. Dewitt (1849), 2 C. & K., 905.

A person who knowing his name to be A. signs another name as a witness to a marriage in an authorized register, is guilty of the offence of inserting a false entry in the register although he so signs as a third witness and two only were required by law. R. v. Asplin (1873), 12 Cox C. C., 391.

481. Penalty.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who,—

(a) **False certificate of copy.**—Being a person authorized or required by law to give any certified copy of any entry in any

register in the last preceding section mentioned, certifies any writing to be a true copy or extract, knowing it to be false, or knowingly utters any such certificate; or,

(b) **Fraudulently concealing register.**—Unlawfully and for any fraudulent purpose takes any such register or certified copy from its place of deposit or conceals it; or,

(c) **Permitting concealment.**—Being a person having the custody of any such register or certified copy, permits it to be so taken or concealed. 55-56 V., c. 29, s. 437.

482. Penalty.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who,—

(a) **False certificate of entry.**—Being by law required to certify that any entry has been made in any such register makes such certificate knowing that such entry has not been made; or,

(b) **Of particulars.**—Being by law required to make a certificate or declaration concerning any particular required for the purpose of making entries in such register, knowingly makes such certificate or declaration containing a falsehood; or,

(c) **Uttering false copy of record.**—Being an officer having custody of the records of any court, or being the deputy of any such officer, wilfully utters a false copy or certificate of any record; or,

(d) **False signature.**—Not being such officer or deputy fraudulently signs or certifies any copy of certificate of any record, or any copy of any certificate, as if he were such officer or deputy. 55-56 V., c. 29, s. 438.

483. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(a) **Knowingly certifying false copy by official.**—Being an officer required or authorized by law to make or issue any certified copy of any document or of any extract from any document, wilfully certifies, as a true copy of any document or of any extract from any such document, any writing which he knows to be untrue in any material particular; or,

(b) **False signature.**—Not being such officer as aforesaid fraudulently signs or certifies any copy of any document, or of any extract from any document, as if he were such officer. 55-56 V., c. 29, s. 439.

484. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to defraud,—

(a) **False entry in Government account books.**—Makes any untrue entry or any alteration in any book of account kept by the

Government of Canada, or of any province of Canada, or by any bank for any such Government, in which books are kept the accounts of the owners of any stock, annuity or other public fund transferable for the time being in any such books, or who, in any manner, wilfully falsifies any of the said books; or,

(b) **Transfer by person other than owner.**—Makes any transfer of any share or interest of or in any stock, annuity or public fund, transferable for the time being at any of the said banks, in the name of any person other than the owner of such share or interest. 55-56 V., c. 29, s. 440.

485. False dividend warrants.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being in the employment of the Government of Canada, or of any province of Canada, of any bank in which any books of account mentioned in the last preceding section are kept, with intent to defraud, makes out or delivers any dividend warrant, or any warrant for the payment of any annuity, interest or money payable at any of the said banks, for an amount greater or less than that to which the person on whose account such warrant is made out is entitled. 55-56 V., c. 29, s. 441.

FORGERY OF TRADE MARKS AND FRAUDULENT MARKING OF MERCHANDISE.

486. Forgery.—Every one is deemed to forge a trade mark who either,—

(a) **Simulating trade mark.**—Without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling it as to be calculated to deceive; or,

(b) **Falsifying trade mark.**—Falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

2. **Forged trade mark.**—Any trade mark or mark so made or falsified is, in this Part, referred to as a forged trade mark. 55-56 V., c. 29, s. 445.

487. Applying trade marks.—Every one is deemed to apply a trade mark, or mark, or trade description to goods who,—

(a) **To goods.**—Applies it to the goods themselves; or,

(b) **To covering for goods.**—Applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or,

(c) **By placing goods in covering.**—Places, incloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture in, with or to any

covering, label, reel, or other thing to which a trade mark or mark or trade description has been applied; or,

(d) **By fraudulent use of trade mark.**—Uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

2. **By connecting with other article.**—A trade mark or mark or trade description is deemed to be applied whether it is woven, impressed or otherwise worked into, or annexed or affixed to, the goods, or to any covering, label, reel, or other thing.

3. **Falsely applying.**—Every one is deemed to falsely apply to goods a trade mark or mark who, without the assent of the proprietor of the trade mark, applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive. 55-56 V., c. 29, s. 446.

The use of the words "quadruple plate" in an advertisement of sale of silverplated ware may constitute a false trade description, the application of which is an offence under Cr. Code sec. 446 (now sec. 487).

It is not necessary that a false trade description under this section should be physically connected with the goods or that it should accompany the same, and oral evidence is admissible to connect the description of the goods in the advertisement with the goods afterwards sold. R. v. T. Eaton Company, Ltd. (1899), 3 C. C. C., 421.

The description in an invoice of the goods is sufficient, but an oral statement made on the sale is not within this section. Coppen v. Moore (1898), 2 Q. B., 306.

See also Budd v. Lucas (1891), 1 Q. B., 408; Langley v. Bombay Tea Co. (1900), 2 Q. B., 460.

No prosecution for this offence shall be commenced after the expiration of three years from the time of its commission. Section 1140.

488. Forging, etc., trade marks.—Every one is guilty of an indictable offence who, with intent to defraud,—

(a) forges any trade mark; or,

(b) falsely applies to any goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive; or,

(c) makes any die, block, machine or other instrument, for the purpose of forging, or being used for forging, a trade mark; or,

(d) applies any false trade description to goods; or,

(e) disposes of, or has in his possession, any die, block, machine, or other instrument, for the purpose of forging a trade mark; or,

(f) causes any of such things to be done.

2. **Burden of proof.**—On any prosecution for forging a trade mark the burden of proof of the assent of the proprietor shall lie on the defendant. 55-56 V., c. 29, ss. 447 and 710.

The prosecution must be commenced within three years from the time the offence was committed. Section 1140.

On a charge of falsely applying a trade mark the onus of proving that the assent of the proprietor of the trade mark has not been given is upon the prosecution. Section 488 (2) applies only to cases of forgery of a trade mark and not to cases of "falsely applying," to shift the onus to the defendant of proving such assent. R. v. Howarth (1898), 1 C. C. C., 243.

Upon a prosecution for falsely applying an imitation of a trade mark with intent to defraud, it is open to the accused to attack the validity of the registered trade mark. R. v. Cruttenden (1905), 10 C. C. C., 223.

489 Selling goods falsely marked.—Saving.—Every one is guilty of an indictable offence who sells or exposes, or has in his possession, for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive, is falsely applied, as the case may be, unless he proves,—

(a) that having taken all reasonable precaution against committing such an offence he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and,

(b) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; and,

(c) that otherwise he had acted innocently. 55-56 V., c. 29, s. 448.

Prosecution for this offence must be commenced within three years from the time of the commission of the offence. Section 1140.

The Canadian law respecting trade-marks being derived from English legislation, reference for its interpretation should be had to English decisions, more especially as the law extends throughout the Dominion, and it is desirable that the jurisprudence should be uniform. R. v. Authier (1897), 1 C. C. C., 68.

It is not necessary that the resemblance should be such as to deceive persons who might see the two marks placed side by side, or who might examine them critically. R. v. Authier (supra).

See also Wotherspoon & Currie, 5 E. & I., App. 508; Leather Cloth Co. v. American Leather Cloth Co., 11 H. L. C., 539; Seixo v. Provezende, 1 Chy. App., 196.

490. Defacing trade mark.—Every one is guilty of an indictable offence who,—

(a) Wilfully defaces, conceals or removes the trade mark duly registered, or name of another person upon any cask, keg, bottle, siphon, vessel, can, or other package, unless such cask, keg, bottle, siphon, vessel, can, case or other package has been purchased from such other person, if the same shall have been so defaced, concealed or removed without the consent of, and with intention to defraud such other person;

(b) **Using trade marks of others by trafficking in bottles.**—Being a manufacturer, dealer or trader, or bottler, trades or traffics in any bottle or siphon which has upon it the trade mark duly registered or name of another person, without the written consent of such other person, or without such consent fills such bottle or siphon with any beverage for the purpose of sale or traffic.

2. **Using bottles.—Prima facie evidence.**—The using by any manufacturer, dealer or trader or bottler, other than such other person, of any bottle or siphon for the sale therein of any beverage, or the having by any such manufacturer, dealer, trader or bottler upon any bottle or siphon such trade mark or name of such other person, or the buying, selling or trafficking in any such bottle or siphon without such written consent of such other person, or the fact that any junk-dealer has in his possession any bottle or siphon having upon it such a trade mark or name without such written consent, shall be *prima facie* evidence of trading or trafficking within the meaning of paragraph (b) of this section. 63-64 V., c. 46, s. 3.

The prosecution must be commenced within three years from the time of the commission of the offence, section 1140.

A soda water manufacturer who fills for the purpose of sale bottles having the name of another manufacturer permanently placed thereon is guilty of an indictable offence under this section unless the manufacturer whose name appears on the bottles has given a written consent to such filling.

It is not essential to the offence that the name on the bottles should be registered as a trade mark. R. v. Irvine (1905), 9 C. C. C., 407.

491. Penalty where none specified.—Every one guilty of an offence defined in this Part in respect to trade marks or names, or in respect to trade descriptions or false trade descriptions for which no penalty is in this Part otherwise provided, is liable,—

(a) **On indictment.**—On conviction on indictment, to two years' imprisonment, with or without hard labour, or to a fine or to both imprisonment and fine; and,

(b) **On summary conviction.**—On summary conviction, to four months' imprisonment, with or without hard labour, or to a fine not exceeding one hundred dollars; and, in case of a second or subsequent conviction, to six months' imprisonment, with or without hard labour, or to a fine not exceeding two hundred and fifty dollars.

2. **Forfeiture.**—In any case every chattel, article, instrument or thing, by means of, or in relation to which, the offence has been committed shall be forfeited. 55-56 V., c. 29, s. 450.

492. Falsely representing that goods are manufactured for His Majesty.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars, who falsely represents that any goods are made by a person holding a royal warrant, or for the service of His Majesty or any of the royal family, or any government department of the United Kingdom or of Canada. 55-56 V., c. 29, s. 451.

The prosecution must be commenced within three years from the time of the commission of the offence, section 1140.

493. Unlawful importation of goods liable to forfeiture.—Every one is guilty of an offence and liable, on summary conviction, to a penalty of not more than five hundred dollars nor less than two hundred dollars who imports or attempts to import any goods which, if sold, would be forfeited under the provisions of this Part, or any goods manufactured in any foreign state or country which bear any name or trade mark which is or purports to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom or in Canada, unless such name or trade mark is accompanied by a definite indication of the foreign state or country in which the goods were made or produced; and such goods shall be forfeited. 55-56 V., c. 29, s. 452.

The prosecution must be commenced within three years from the time of the commission of the offence, section 1140.

494. Making instruments for forging trade marks.—Any one who is charged with making any die, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark, or any mark, so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves,—

(a) **Defence.**—That in the ordinary course of his business he is employed on behalf of other persons, to make dies, blocks, machines or other instruments for making or being used in making trade marks or, as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in Canada, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and,

(b) that he took reasonable precaution against committing the offence charged; and,

(c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and,

(d) that he gave to the prosecutor all the information in his power with respect to the person by or on whose behalf the trade mark, mark or description was applied;

Discharge.—Shall be discharged from the prosecution but is liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence. 55-56 V., c. 29, s. 453.

495. Servant not liable.—No servant of a master, resident in Canada, who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, gives full information as to his master, is liable to any prosecution or punishment for any offence defined in this Part. 55-56 V., c. 29, s. 454.

OFFENCES CONNECTED WITH TRADE AND BREACHES OF CONTRACT.

496. Conspiracy in restraint of trade.—A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade. 55-56 V., c. 29, s. 516.

See section 573.

497. Acts in restraint not unlawful.—The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the last preceding section. 55-56 V., c. 29, s. 517.

498. Penalty for conspiracy.—Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars, and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company,—

(a) **To limit transportation facilities.**—To unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or,

(b) **Restrain commerce.**—To restrain or injure trade or commerce in relation to any such article or commodity; or,

(c) **Lessen manufacturing**.—To unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance tne price thereof; or,

(d) **Lessen competition**.—To unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

2. **Saving**.—Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees. 63-64 V., c. 46, s. 3.

It is not an unlawful combination for a manufacturer to agree with a number of dealers to sell to them exclusively. R. v. American Tobacco Co. (1897), 3 Revue de Jurisprudence, 453.

A person who organizes an association to restrict and control the business of retail coal dealing to the members of the association, and to prevent anyone else obtaining it from the foreign shippers at wholesale rates for resale in the district in which the association operates is properly convicted under this section of conspiracy to prevent competition in the sale of a commodity which is the subject of trade. R. v. Elliott (1905), 9 C. C. C., 505.

See section 581. 1012. Rev Lechtit 15 Ont L.J.

499. Penalty.—Every one is guilty of an offence punishable on indictment or on summary conviction before two justices and liable on conviction to a penalty not exceeding one hundred dollars or to three months' imprisonment, with or without hard labour, who,—

(a) **Wilfully breaking contract with danger to life or property**.—Wilfully breaks any contract made by him knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or to cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury; or,

(b) **Wilfully breaking contract connected with supply of power, light, gas or water**.—Being bound, agreeing or assuming, under any contract made by him with any municipal corporation or authority, or with any company, to supply any city or any other place, or any part thereof, with electric light or power, gas or water, wilfully breaks such contract knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city or place, or part thereof, wholly or to a great extent, of their supply of power, light, gas or water; or,

(c) **Wilfully breaking contract with railway under agreement to carry mails**.—Being bound, agreeing or assuming,

under any contract made by him with a railway company, or with His Majesty, or any one on behalf of His Majesty, in connection with a government railway on which His Majesty's mails, or passengers or freight are carried, to carry His Majesty's mails, or to carry passengers or freight, wilfully breaks such contract knowing, or having reason to believe that the probable consequences of his so doing, either alone or in combination with others, will be to delay or prevent the running of any locomotive engine, or tender, or freight or passenger train or car, on the railway.

2. **Municipality or company supplying light, power, gas or water wilfully breaking contract.**—Every municipal corporation or authority or company, bound, agreeing or assuming to supply any city, or any other place, or any part thereof, with electric light or power, gas or water, which wilfully breaks any contract made by such municipal corporation, authority or company, knowing or having reason to believe that the probable consequences of its so doing will be to deprive the inhabitants of that city or place or part thereof wholly, or to a great extent, of their supply of electric light or power, gas or water, is liable to a penalty not exceeding one thousand dollars.

3. **Railway company breaking contract.**—Every railway company, bound, agreeing or assuming to carry His Majesty's mails, or to carry passengers or freight, which wilfully breaks any contract made by such railway company, knowing or having reason to believe that the probable consequences of so doing will be to delay or prevent the running of any locomotive engine or tender, or freight or passenger train or car on the railway, is liable to a penalty not exceeding one hundred dollars.

4. **Malice not an element.**—It is not material whether any offence defined in this section is committed from malice conceived against the person, corporation, authority or company with which the contract is made or otherwise. 55-56 V., c. 29, s. 521.

500. This and preceding section to be posted up.—Every such municipal corporation, authority, or company, shall cause to be posted up at the electrical works, gas works, or water-works, or railway stations, as the case may be, belonging to such corporation, authority or company, a printed copy of this and the preceding section in some conspicuous place, where the same may be conveniently read by the public; and as often as such copy becomes defaced, obliterated or destroyed shall cause it to be renewed with all reasonable despatch.

2. **Penalty for default.**—Every such municipal corporation, authority or company which makes default in complying with such

duty is liable to a penalty not exceeding twenty dollars for every day during which such default continues.

3. **Defacing same.**—Every person unlawfully injuring, defacing or covering up any such copy so posted up is liable on summary conviction to a penalty not exceeding ten dollars. 55-56 V., c. 29, s. 522.

501. Intimidation.—Every one is guilty of an offence punishable, at the option of the accused, on indictment or on summary conviction before two justices and liable on conviction to a fine not exceeding one hundred dollars, or to three months' imprisonment with or without hard labour, who, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain,—

(a) **By violence.**—Uses violence to such other person, or his wife or children, or injures his property; or,

(b) **By threats.**—Intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or,

(c) **By following.**—Persistently follows such other person about from place to place; or,

(d) **By hiding property.**—Hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or,

(e) **By following disorderly.**—With one or more other persons, follows such other person, in a disorderly manner, in or through any street or road; or,

(f) **By watching house.**—Besets or watches the house or other place w ere such other person resides or works, or carries on business or happens to be. 55-56 V., c. 29, s. 523; 4[illegible]5 E. VII., c. 9, s. 3.

A threat made by workmen to their employer that they will strike if he employs a non-union man is not intimidation. Connor v. Kent (1891), 2 Q. B., 545.

502. Intimidation to prevent working at any trade.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages or of any unlawful combination or conspiracy respecting any trade, business or manufacture, or respecting any person concerned or employed therein, unlawfully assaults any person, or, in pursuance of any such combination or conspiracy, uses any violence or threat of violence to any person, with intent to hinder him from working or being em-

ployed at such trade, business or manufacture. 55-56 V., c. 29, s. 524.

503. Penalty.—Every one is guilty of an offence punishable on indictment, or on summary conviction before two justices, and liable on conviction to a fine not exceeding one hundred dollars, or to three months' imprisonment with or without hard labour, who,—

(a) **Using violence to hinder buying grain, etc.**—Beats or uses any violence or threat of violence to any person with intent to deter or hinder him from buying, selling or otherwise disposing of any wheat or other grain, flour, meal, malt or potatoes, or other produce or goods, in any market or other place; or,

(b) **To prevent conveyance of same.**—Beats or uses any such violence or threat to any person having the charge or care of any wheat or other grain, flour, meal, malt or potatoes, while on the way to or from any city, market, town or other place with intent to stop the conveyance of the same; or,

(c) **By violence hinders seamen, etc., exercising lawful calling.**—By force or threats of violence, or by any form of intimidation whatsoever, hinders or prevents, or attempts to hinder or prevent any seaman, stevedore, ship carpenter, ship labourer or other person employed to work at or on board any ship or vessel, or to do any work connected with the loading or unloading thereof, from working at or exercising any lawful trade, business, calling or occupation in or for which he is so employed; or with intent so to hinder or prevent, besets or watches such ship, vessel or employee; or,

(d) **Using violence with intent to hinder.**—Beats or uses any violence to, or makes any threat of violence against, any such person with intent to hinder or prevent him from working at or exercising such trade, business, calling or occupation or on account of his having worked at or exercised the same. 55-56 V., c. 29, s. 525.

504. Intimidation to prevent bidding on public lands.—Every person is guilty of an indictable offence and liable to a fine not exceeding four hundred dollars, or to two years' imprisonment, or to both, who, before or at the time of the public sale of any Indian lands, or public lands of Canada, or of any province of Canada, by intimidation, or illegal combination, hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale. 55-56 V., c. 29, s. 526.

TRADING STAMPS.

505. Issuing trading stamps.—Every one is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding five hundred dollars, who, by himself or his employee or agent, directly or indirectly, issues, gives, sells or otherwise disposes of, or offers to issue, give, sell or otherwise dispose of trading stamps to a merchant or dealer in goods for use in his business. 4-5 E. VII., c. 9, s. 1.

506. Giving to a purchaser.—Every one is guilty of an indictable offence and liable to six months' imprisonment, and to a fine not exceeding two hundred dollars, who, being a merchant or dealer in goods, by himself or his employee or agent, directly or indirectly, gives or in any way disposes of, or offers to give or in any way dispose of, trading stamps to a purchaser from him of any such goods. 4-5 E. VII., c. 9, s. 1.

507. Executive officers of offending company liable.—Any executive officer of a corporation or company guilty of an offence under the two last preceding sections who in any way aids or abets in or counsels or procures the commission of such offence, is guilty of an indictable offence and liable to the punishment stated in the said sections respectively. 4-5 E. VII., c. 9, s. 1.

508. Receiving trading stamps.—Every one is guilty of an offence and liable, on summary conviction, to a fine not exceeding twenty dollars, who, being a purchaser of goods from a merchant or dealer in goods, directly or indirectly receives or takes trading stamps from the vendor of such goods or his employee or agent. 4-5 E. VII., c. 9, s. 1.

PART VIII.

WILFUL AND FORBIDDEN ACTS IN RESPECT OF CERTAIN PROPERTY.

INTERPRETATION.

509. Wilfully defined.—Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, is deemed for the purposes of this Part to have caused it wilfully. 55-56 V., c. 29, s. 481.

510. Penalty.—Every one is guilty of the indictable offence of mischief who wilfully destroys or damages any of the property in this section mentioned, and is liable to the punishment in this section specified, that is to say:—

(A) To imprisonment for life if the object damaged is,—

(a) **Damage to house, ship or boat.**—A dwelling-house, ship or boat, and the damage is caused by an explosion, and any person is in such dwelling-house, ship or boat; and the damage causes actual danger to life; or,

(b) **Bank, dyke, or sea-wall.**—A bank, dyke or wall of the sea, or of any inland water, natural or artificial, or any work in, on, or belonging to any port, harbour, dock or inland water, natural or artificial, and the damage causes actual danger of inundation; or,

(c) **Bridge, viaduct or aqueduct.**—Any bridge, whether over any stream of water or not, or any viaduct, or aqueduct, over or under which bridge, viaduct or aqueduct any highway, railway or canal passes, and the damage is done with intent to render and does render such bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable; or,

(d) **Railway.**—A railway damaged with the intent of rendering and so as to render such railway dangerous or impassable;

(B) **Penalty.**—To fourteen years' imprisonment if the object damaged is,—

(a) **Damage to ship.**—A ship in distress or wrecked, or any goods, merchandise or articles belonging thereto; or,

(b) **To cattle.**—Any cattle or the young thereof, and the damage is caused by killing, maiming, poisoning or wounding;

(C) **Penalty.**—To seven years' imprisonment if the object damaged is,—

(a) **Damage to ship.**—A ship damaged with intent to destroy or render useless such ship; or,

(b) **Signal.**—A signal or mark used for purposes of navigation; or,

(c) **Bank, dyke or wall.**—A bank, dyke or wall of the sea or of any inland water or canal, or any materials fixed in the ground for securing the same, or any work belonging to any port, harbour, dock, or inland water or canal; or,

(d) **River or canal.**—A navigable river or canal damaged by interference with the flood gates or sluices thereof or otherwise, with intent and so as to obstruct the navigation thereof; or,

(e) **Flood gate or sluice.**—The flood gate or sluice of any private water with intent to take or destroy, or so as to cause the loss or destruction of, the fish therein; or,

(f) **Private fishery.**—A private fishery or salmon river damaged by lime or other noxious material put into the water thereof with intent to destroy fish therein or to be put therein; or,

(g) **Flood gate.**—The flood gate of any mill-pond, reservoir or pool cut through or destroyed; or,

(h) **Goods.**—Goods in process of manufacture damaged with intent to render them useless; or,

(i) **Machines.**—Agricultural or manufacturing machines, or manufacturing implements, damaged with intent to render them useless; or,

(j) **Hop bind.**—A hop bind growing in a plantation of hops, or a grape vine growing in a vineyard;

(D) **Penalty.**—To five years' imprisonment if the object damaged is,—

(a) **Damaging tree or shrub.**—A tree, shrub or underwood growing in a park, pleasure ground or garden, or in any land adjoining or belonging to a dwelling-house, injured to an extent exceeding in value five dollars; or,

(b) **Letter bag, etc.**—A post letter bag or post letter; or,

(c) **Letter box, etc.**—Any street letter box, pillar, box or other receptacle established by authority of the Postmaster General for the deposit of letters or other mailable matter; or,

(d) **Mailable matter.**—Any parcel sent by parcel post, any packet or package of patterns or samples of merchandise or goods, or of seeds, cuttings, bulbs, roots, scions or grafts, or any printed vote or proceeding, newspaper, printed paper or book or other mailable matter, not being a post letter, sent by mail; or,

(e) **Any other property by night.**—Any property, real or personal, corporeal or incorporeal, for damage to which no special punishment is by law prescribed, damaged by night to the value of twenty dollars;

(E) **Penalty.**—**Any other property**—To two years' imprisonment if the object damaged is any property, real or personal, corporeal or incorporeal, for damage to which no special punishment is by law prescribed, damaged to the value of twenty dollars. 55-56 V., c. 29 s. 499.

At common law a structure in order to be a bridge must have crossed a stream of water. R. v. Oxfordshire (1830), 1 B. & A., 289.

"Maiming" means inflicting an injury of a permanent nature. R. v. Jeans (1844), 1 C. & K., 539; R. v. Owens (1828), 1 Moody C. C., 205.

But in order to constitute a wounding the injury done need not be of a permanent character. R. v. Haywood (1801), 2 East P. C., 1076.

Upon the charge of poisoning cattle evidence of previous acts of poisoning on the part of the accused are admissible. R. v. Mogg (1830), 4 C. & P., 364.

Under s.s. (c.) parag. (i).—Although the destruction or damage must be done both wilfully and also with intent to render the machine or implement useless, it is not necessary in order to constitute the offence specified in this section that the damage actually done should be of a permanent nature. R. v. Fisher (1865), L. R. 1 C. C. R., 7.

Under s.s. (D) parag. (a).—The words "adjoining any dwelling-house" mean ground, etc., which has actual contact with a dwelling-house, and therefore the section does not apply to ground separated from a house by a walk, wall or gate. R. v. Hodges (1829), M. & M., 341.

The amount of injury refers to the actual injury done to the tree, etc., itself, and the sum specified by the section cannot be made up by including consequential damages resulting from the act of the accused. R. v. Whiteman (1854), 23 L. J. M. C., 120.

But the $5.00 damages may be made up of the injuries done to several trees, etc., at the same time. R. v. Shepherd (1868), L. R., 1 C. C. R., 118.

A drainage ditch filled with water is not an "artificial inland water" within the meaning of section 510 s.s. c. (c), making it an indictable offence to wilfully destroy or damage any inland water or canal. R. v. Braun (1904), 8 C. C. C., 397.

See also section 539.

ARSON.

511. Offence.—Penalty.—Every one is guilty of the indictable offence of arson and liable to imprisonment for life who wilfully sets fire to any building or structure, whether such building or structure is completed or not, or to any stack of vegetable produce or of mineral or vegetable fuel, or to any mine or well of oil or other combustible substance, or to any ship or vessel, whether completed or not, or to any timber or materials placed in any ship-yard for building or repairing or fitting out any ship, or to any of His Majesty's stores or munitions of war. 55-56 V., c. 29, s. 482.

At common law if the house were the prisoner's it was necessary to shew that his attempt to set fire to it was unlawful and malicious. R. v. Greenwood (1864), 23 U. C. Q. B., 250.

And this was supplied by proof that the act might or would be an injury to or a fraud upon any person, and that the accused acted with intent to do such injury. R. v. Bryans (1862), 12 U. C. C. P., 166.

See also R. v. Probert (1799), 2 East P. C., 1030; R. v. Isaac (1799), 2 East P. C., 1031.

When the question arises whether the burning was accidental or wilful, evidence may be admitted tending to show that it is probable that upon another occasion the accused committed a similar offence against the same property. R. v. Dossett (1846), 2 C. & K., 306.

And it may also be shown that other houses which he has occupied have been burned, and that he has been paid the insurance which he claimed in respect to the loss caused by such fires. R. v. Gray (1866), 4 F. & F., 1102.

Where a house is robbed and burnt, evidence that some of the articles which were in the house at the time of the fire were subsequently found

in the possession of the accused, is admissible as tending to prove that he had set the house on fire. R. v. Hickman (1789), 2 East P. C., 1034.

See also R. v. Taylor (1851), 5 Cox C. C., 138; R. v. Bailey (1847), 2 Cox C. C., 311; R. v. Regan (1850), 4 Cox C. C., 335; R. v. Harris (1864), 4 F. & F., 342.

When any person is charged with having set fire to his own house, the intent to defraud must be proved by direct evidence, and cannot be inferred merely from the act itself. And when the charge is that of arson with intent to defraud an insurance company, the nature of the proceedings does not give to the accused such notice to produce the policy as to dispense with the actual notice to produce it; and no secondary evidence can, in default of notice to produce, be given of the contents of the policy. R. v. Kitson (1853), 6 Cox C. C., 159.

Where it was suggested that the accused had set fire to the building in question in order to obtain the insurance which there was upon her property therein, evidence was admitted to show that the accused was well off, so as to negative such suggestion. R. v. Grant (1865), 4 F. & F., 322.

Setting fire.—It is sufficient if the wood has been at a red heat. R. v. Parker, 9 C. & P., 45.

But the mere scorching the wood black is not enough. R. v. Russell (1842), Car. & M., 541.

It is not necessary that there should have been a flame. R. v. Stallion, 1 Moo., 398.

A man is presumed to intend the natural and probable consequences of his own voluntary act. Therefore, if one kindles a fire in a stack situated so that it is likely to communicate and does communicate in fact to an adjoining building, he is chargeable with burning the building. R. v. Cooper, 5 C. & P., 535.

But where a sailor entered a part of a vessel to steal rum there stored, and while he was tapping a cask a lighted match, which he held, came in contact with the rum and a fire resulted which destroyed the vessel, it was held that it was not arson. R. v. Faulkner, 13 Cox C. C., 550.

512. Attempt to commit arson.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully attempts to set fire to anything mentioned in the last preceding section, or who wilfully sets fire to any substance so situated that he knows that any thing mentioned in the last preceding section is likely to catch fire therefrom. 55-56 V., c. 29, s. 483.

An intention to commit a crime does not amount to an attempt, but in order to constitute the offence of attempting to commit any crime something must have been done in pursuance of the intention of the accused to commit that crime. See Holloway v. R. (1851), 17 Q. B., 317; R. v. Connolly (1867), 26 U. C. Q. B., 322.

Soliciting another person to commit a crime may be an attempt to commit that crime, whether or not the person so solicited actually commits it. R. v. Ransford (1874), 13 Cox C. C., 9.

Mere preparations to commit an offence are not sufficient to constitute an attempt to commit it. It is, however, impossible to state generally what is the dividing line between the stage of preparation and that of actual attempt. See R. v. Taylor (1859), 1 F. & F., 511; R. v. Goodman (1872), 22 U. C. C. P., 318.

SETTING OTHER FIRES.

513. Penalty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully sets fire to,—

(a) **Crop.**—Any crop, whether standing or cut down, or any wood, forest, coppice or plantation, or any heath, gorse, furze or fern; or,

(b) **Trees, etc., dam or slide.**—Any tree, lumber, timber, logs, or floats, boom, dam or slide, and thereby injures or destroys the same. 55-56 V., c. 29, s. 484.

See R. v. Dossett (1846), 2 C. & K., 306.

514. Attempt.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully attempts to set fire to anything mentioned in the last preceding section, or who wilfully sets fire to any substance so situated that he knows that any thing mentioned in the last preceding section is likely to catch fire therefrom. 55-56 V., c. 29, s. 485.

See R. v. Price (1841), 9 C. & P., 729; R. v. Twose (1879), 14 Cox C. C. 327.

515. Recklessly setting fire to forests.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who, by such negligence as shows him to be reckless or wantonly regardless of consequences, or in violation of a provincial or municipal law of the locality, sets fire to any forest, tree, manufactured lumber, square timber, logs or floats, boom, dam or slide, on the Crown domain, or on land leased or lawfully held for the purpose of cutting timber, or on private property on any creek or river, or rollway, beach or wharf, so that the same is injured or destroyed.

(2) **May be tried summarily.**—The magistrate investigating any such charge may, in his discretion, if the consequences have not been serious, dispose of the matter summarily, without sending the offender for trial, by imposing a fine not exceeding fifty dollars, and in default of payment by the committal of the offender to prison for any term not exceeding six months, with or without hard labour. 55-56 V., c. 29, s. 486.

516. Threats to burn.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any building, or any rick or stack of grain, hay or straw or other agricultural produce, or any grain, hay or straw or

other agricultural produce in or under any building, or any ship or vessel. 55-56 V., c. 29, s. 487.

Threats verbally made to burn the complainant's buildings are not indictable under the Criminal Code, and give rise only to proceedings to force the offender to give security to keep the peace. Ex parte Welsh (1898), 2 C. C. C., 35. See section 748 (2).

RAILWAYS, MINES AND ELECTRIC PLANT.

517. Injuries affecting railways, likely to endanger property.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, in manner likely to cause danger to valuable property, without endangering life or person,—

(a) places any obstruction upon any railway, or takes up, removes, displaces, breaks or injures any rail, sleeper or other matter or thing belonging to any railway; or,

(b) shoots or throws anything at an engine or other railway vehicle; or,

(c) interferes without authority with the points, signals or other appliances upon any railway; or,

(d) makes any false signal on or near any railway; or,

(e) wilfully omits to do any act which it is his duty to do; or,

(f) does any other unlawful act.

2. **With intent.**—Every one who does any of the acts in this section mentioned with intent to cause such danger is liable to imprisonment for life. 55-56 V., c. 29, s. 489.

See sections 282 and 283.

518. Obstructing railways.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any act or wilful omission, obstructs or interrupts, or causes to be obstructed or interrupted, the construction, maintenance or free use of any railway or any part thereof, or any matter or thing appertaining thereto or connected therewith. 55-56 V., c. 29, s. 490.

A railway which, although completed, has not yet been used for the carriage of passengers, is within the meaning of the word "railway" as used in the above section. R. v. Bradford (1860), 29 L. J. M. C., 171.

It has been held that a person who, without any lawful reason or excuse, uses signals to stop a train and thereby causes it to slacken its speed, is guilty of an offence under this section, even although the train does not actually stop. R. v. Hadfield (1870), L. R., 1 C. C. R., 253; R. v. Hardy (1871), L. R., 1 C. C. R., 278.

Using a hand-car on the track of a railway company, without the consent of the company, is an obstruction within the meaning of this section, although the part of the line upon which the hand-car is used is one upon which no trains are then running. R. v. Brownell (1887) 26 N. B. R., 579.

519. Penalty.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the goods or liquors so destroyed or damaged or to one month's imprisonment with or without hard labour, or to both, who,—

(a) **Damaging goods on railway, etc.**—Wilfully destroys or damages anything containing any goods or liquors in or about any railway station or building or any vehicle of any kind on any railway, or in any warehouse, ship or vessel, with intent to steal or otherwise unlawfully to obtain or to injure the contents, or any part therefor; or,

(b) **Wasting liquors.**—Unlawfully drinks or wilfully spills or allows to run to waste any such liquors, or any part thereof. 55-56 V., c. 29, s. 491.

520. Penalty.—With intent to injure mine or oil well.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to injure a mine or oil well, or obstruct the working thereof,—

(a) **Conveying substance into.**—Causes any water, earth, rubbish or other substance to be conveyed into the mine or oil well or any subterranean channel communicating with such mine or well; or,

(b) **Damaging shaft.**—Damages any shaft or any passage of the mine or well, or,

(c) **Damaging apparatus.**—Damages, with intent to render useless, any apparatus, building, erection, bridge or road belonging to the mine or well, whether the object damaged be complete or not; or,

(d) **Hindering working of.**—Hinders the working of any such apparatus; or,

(e) **Damaging tackle.**—Damages or unfastens, with intent to render useless, any rope, chain or tackle used in any mine or well or upon any way or work connected therewith. 55-56 V., c. 29, s. 498.

If the act be done with a colour of right it is no offence. R. v. Matthews (1876), 14 Cox C. C., 5.

521. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully,—

(a) **Damaging telegraph, telephone or fire alarm.**—Destroys, removes or damages anything which forms part of, or is used or employed in or about any electric or magnetic telegraph, electric light, telephone or fire-alarm, or in the working thereof, or for the transmission of electricity for other lawful purposes; or,

(b) **Obstructing communication.**—Prevents or obstructs the sending, conveyance or delivery of any communication by any such telegraph, telephone or fire-alarm, or the transmission of electricity for any such electric light, or for any such purpose as aforesaid.

2. **Attempts.—Penalty.**—Every one who wilfully, by any overt act, attempts to commit any such offence is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, or to three months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 492.

To constitute an offence the act must be done without legal justification or excuse and without colour of right.

VESSELS AND RAFTS.

522. Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for life who wilfully,—

(a) **Casting away ship.**—Casts away or destroys any ship, whether complete or unfinished; or,

(b) **Any act tending.**—Does any act tending to the immediate loss or destruction of any ship in distress; or,

(c) **Interfering with signal.**—Interferes with any marine signal, or exhibits any false signal, with intent to bring a ship or boat into danger. 55-56 V., c. 29, s. 493.

523. Attempt to wreck.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who attempts to cast away or destroy any ship, whether complete or unfinished. 55-56 V., c. 29, s. 494.

524. Penalty.—Preventing or impeding.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully prevents or impedes, or endeavours to prevent or impede,—

(a) **Saving vessels.**—The saving of any vessel that is wrecked, stranded, abandoned or in distress; or,

(b) **Persons trying to save.**—Any person in his endeavour to save such vessel.

2. **Saving wreck.**—Every one who wilfully prevents or impedes, or endeavours to prevent or impede, the saving of any wreck is guilty of an offence punishable on indictment or on summary conviction and liable, on conviction on indictment, to two years' imprisonment, and, on summary conviction before two justices, to a fine of four hundred dollars or six months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 496.

As to definition of "wreck," see section 2 (41).

525. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully,—

(a) **Injuring dam, chain or raft, etc.**—Breaks, injures, cuts, loosens, removes or destroys, in whole or in part, any dam, pier, slide, boom or other such work, or any chain or other fastening attached thereto, or any raft, crib of timber or saw-logs; or,

(b) **Blocking up channel.**—Impedes or blocks up any channel or passage intended for the transmission of timber. 55-56 V., c. 29, s. 497.

PUBLIC PROPERTY.

526. Interfering with marine signals.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully alters, removes or conceals, or attempts to alter, remove or conceal, any signal, buoy or other sea mark used for the purposes of navigation.

2. **Mooring vessel to.**—Every one who makes fast any vessel or boat to any such signal, buoy, or sea mark is liable, on summary conviction, to a penalty not exceeding ten dollars, and in default of payment to one month's imprisonment. 55-56 V., c. 29, s. 495.

527. Removing natural bar necessary for a harbour.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, who wilfully and without the permission of the Minister of Marine and Fisheries, the burden of proving which permission shall lie on the accused, removes any stone, wood, earth or other material forming a natural bar necessary to the existence of a public harbour, or forming a natural protection to such bar. 56 V., c. 32, s. 1.

528. Penalty.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully,—

(a) **Injuring.**—Destroys, injures or obliterates, or causes to be destroyed, injured or obliterated; or,

(b) **Erasure in.**—Makes or causes to be made any erasure, addition of names or interlineation of names in or upon;

Election documents.—Any writ of election, or any return to a writ of election, or any indenture, poll-book, voters' list, certificate, affidavit or report, or any document, ballot or paper made, prepared or drawn out according to any law in regard to Dominion, provincial, municipal or civic elections. 55-56 V., c. 29, s. 503.

When a returning officer, appointed to hold a Dominion election in an electoral district, selects one of the copies of lists of voters sent to him by the Clerk of the Crown in Chancery pursuant to the Dominion Elections

Act, as the one which he will certify and forward to the deputy returning officer, for use at one of the polling sub-divisions, the copy so selected becomes a voters' list within the meaning of Cr. Code sec 528, and it is an indictable offence for the returning officer wilfully to erase names of voters from it either before or after he certifies it and forwards it to the deputy. R. v. Duggan (1906), 12 C. C. C., 147.

BUILDINGS, FENCES AND LAND MARKS.

529. Penalty.—To the prejudice of owner, etc., of building occupied by offender.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building, which is built on lands subject to a mortgage or which is held for any term of years or other less term, or at will, or held over after the termination of any tenancy, wilfully and to the prejudice of the mortgagee or owner,—

(a) **Injuring or removing building.**—Pulls down or demolishes, or begins to pull down or demolish the same or any part thereof, or removes or begins to remove the same or any part thereof from the premises on which it is erected; or,

(b) **Fixture.**—Pulls down or severs from the freehold any fixture fixed in or to such dwelling-house or building, or part of such dwelling-house or building. 55-56 V., c. 29, s. 504.

Section 360 provides for theft of chattels or fixtures by tenants.

530. Injuries to fences, wall, stile or gate.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the amount of the injury done, who wilfully destroys or damages any fence, or any wall, stile or gate, or any part thereof respectively, or any post or stake planted or set up on any land, marsh, swamp or land covered by water, on or as the boundary or part of the boundary line thereof, or in lieu of a fence thereto.

2. **Subsequent offence.**—Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. 55-56 V., c. 29, s. 507.

531. Injuring or removing marks indicating boundaries of province, county, etc.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully pulls down, defaces, alters or removes any mound, land mark, post or monument lawfully erected, planted or placed to mark or determine the boundaries of any province, county, city, town, township, parish or other municipal division. 55-56 V., c. 29 s. 505.

532. Injuring or removing other boundary marks.—Every one is guilty of an indictable offence and liable to five years' imprisonment, who wilfully defaces, alters or removes any mound, land mark, post or monument lawfully placed by any land surveyor to mark any limit, boundary or angle of any concession, range, lot or parcel of land.

2. **Saving.**—It is not an offence for any land surveyor in his operations to take up such posts or other boundary marks when necessary, if he carefully replaces them as they were before. 55-56 V., c. 29, s. 506.

TREES, VEGETABLES, ROOTS AND PLANTS.

533. Injuries to trees, etc.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars over and above the amount of the injury done, or to two months' imprisonment with or without hard labour, who wilfully destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same is growing, the injury done being to the amount of twenty-five cents, at the least.

2. **Second offence.**—Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to a penalty not exceeding fifty dollars over and above the amount of the injury done, or to four months' imprisonment with hard labour.

3. **Subsequent offence.**—Every one who, having been twice convicted of any such offence, afterwards commits any such offence, is guilty of an indictable offence and liable to two years' imprisonment. 55-56 V., c. 29, s. 508.

534. Injuries to vegetable productions in gardens.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the amount of the injury done, or to three months' imprisonment with or without hard labour, who wilfully destroys, or damages with intent to destroy, any vegetable production growing in any garden, orchard, nursery, ground, house, hot-house, green-house or conservatory.

2. **Subsequent offence.**—Every one who, having been convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence, and liable to two years' imprisonment. 55-56 V., c. 29, s. 509.

535. Injuries to roots or plant growing elsewhere.—Every one is guilty of an offence and liable, on summary convic-

tion, to a penalty not exceeding five dollars over and above the amount of the injury done, or to one month's imprisonment with or without hard labour, who wilfully destroys, or damages with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard or nursery ground.

2. **Subsequent offence.**—Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. 55-56 V., c. 29, s. 510.

CATTLE AND OTHER ANIMALS.

536. Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully,—

(a) **Attempt to injure cattle.**—Attempts to kill, maim, wound, poison or injure any cattle, or the young thereof; or,

(b) **Poison cattle.**—Places poison in such a position as to be easily partaken of by any such animal. 55-56 V., c. 29, s. 500.

537. Injuries to other animals.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars over and above the amount of injury done, or to three months' imprisonment with or without hard labour, who wilfully kills, maims, wounds, poisons or injures any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or kept for any lawful purpose.

2. **Subsequent offence.**—Every one who, having been convicted of any such offence, afterwards commits any offence under this section, is guilty of an indictable offence, and liable to a fine or imprisonment, or both, in the discretion of the court. 55-56 V., c. 29, s. 501.

A person guilty of an offence under this section cannot be sentenced to imprisonment with hard labor in default of payment of the penalty and compensation of costs. R. v. Horton (1897), 31 N. S. R., 217.

See definition of cattle in section 2 (5).

See section 1052 as to offences under the second sub-section.

538. Threats by letters to injure cattle.—Every one is guilty of an indictable offence and liable to two years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to kill, maim, wound, poison or injure any cattle. 55-56 V., c. 29, s. 502.

CASES NOT SPECIALLY PROVIDED FOR.

539. Injuries to other property.—Penalty.—Damage.—Every one who wilfully commits any damage, injury or spoil to or upon any real or personal property, either corporeal or incorporeal, and either of a public or private nature, for which no punishment is hereinbefore provided, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars, and such further sum, not exceeding twenty dollars, as appears to the justice to be a reasonable compensation for the damage, injury or spoil so committed, to be paid in the case of private property to the person aggrieved.

2. **Imprisonment.**—If such sums of money, together with the costs, if ordered, are not paid either immediately after the conviction, or within such period as the justice, at the time of the conviction appoints, the justice may cause the offender to be imprisoned for any term not exceeding two months, with or without hard labour. 55-56 V., c. 29, s. 511.

A conviction hereunder is not good unless it specifies a particular act of injury, and the nature and quality of the property damaged. R. v. Spain (1889), 18 O. R., 385; R. v. Caswell (1870), 20 U. C. C. P., 275; R. v. Leary (1904), 8 C. C. C., 141; R. v. Mahey (1875), 37 U. C. Q. B., 248.

The magistrate's jurisdiction in respect of a charge under this section is not ousted unless the act was done under a fair and reasonable supposition of right, and the magistrate has jurisdiction to summarily try the charge notwithstanding the mere belief of the accused that he had a right to do the act complained of. R. v. Davy (1900), 4 C. C. C., 28.

LIMITATION.

540. Nothing in the last preceding section extends to,—

(a) **Fair claim of right.**—Any case where the person acted under a fair and reasonable supposition that he had a right to do the act complained of; or,

(b) **Sporting.**—Any trespass, not being wilful and malicious, committed in hunting or fishing, or in the pursuit of game. 55-56 V., c. 29, s. 511.

See note to preceding section.

The honest belief of a person charged with an offence under section 539, that he had the right to do the act complained of, is not sufficient to protect him; there must be fair and reasonable ground in fact for that belief. Thus, where the usual reservation in a patent of land bounded by navigable water of "free access to the shore for all vessels, boats and persons" gave a right of access only from the water to the shore, it was held that a person who had broken down fences and had driven across private property to the shore, could not maintain that he had "acted under a fair and reasonable supposition of right." R. v. Davy (1900), 27 O. R., 508.

541. Colour of right.—Nothing shall be an offence under any of the foregoing provisions of this Part unless it is done without legal justification or excuse, and without colour of right.

2. **Partial interest.—Fraud.**—Where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, and if total, shall not prevent his act being an offence, if done with intent to defraud. 55-56 V., c. 29, s. 481.

See R. v. Cronin (1875), 36 U. C. Q. B., 342.

It is necessary where the setting fire is to a man's own house, to prove an intent to injure and defraud. R. v. Bryans (1862), 12 U. C. C. P., 161.

The "colour of right" on the part of the defendant, which under Cr. Code sec. 541 removes the criminal character of an act of damage to property, means an honest belief in a state of facts, which if it actually existed, would constitute a legal justification or excuse. R. v. Johnson (1904), 8 C. C. C., 123.

CRUELTY TO ANIMALS.

542. Penalty.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding fifty dollars, or to three months' imprisonment with or without hard labour, or to both, who,—

(a) **Ill-treating animal.**—Wantonly, cruelly or unnecessarily beats, binds, ill-treats, abuses, overdrives or tortures any cattle, poultry, dog, domestic animal or bird, or any wild animal or bird in captivity; or,

(b) **Injures by ill-usage.**—While driving any cattle or other animal is, by negligence or ill-usage in the driving thereof, the means whereby any mischief, damage or injury is done by any such cattle or other animal; or,

(c) **Fighting of animal.**—In any manner encourages, aids or assists at the fighting or baiting of any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature. 55-56 V., c. 29, s. 512. 58-59 V., c. 40, s. 1.

The prosecution must be commenced within three months from the time of the commission of the offence. Section 1140.

For definition of cattle, see section 2 (5).

The ill-usage must be such as there is no need for. There are cases in which the infliction of pain is justified by the surrounding circumstances, and the general rule is that any act done with the object of making an animal more serviceable for the purposes for which it is generally used, even though such act cause the animal pain, does not come within this section. Thus, it has been held that the castration of horses and the spaying of sows is not cruelty. Lewis v. Fermor (1887), L. R., 18 Q. B. D., 534.

The cutting of the combs of cocks to fit them for fighting or winning prizes at exhibitions has been held to be cruelty. Murphy v. Manning, L. R., 2 Ex. D., 307.

As to dishorning cattle the better opinion appears to be that it is not an offence. Callaghan v. Society, 11 Cox C. C., 101.

But it was held to be so in Ford v. Wiley, L. R., 23 Q. B. D., 203.

The use of an overdraw check rein on a horse is ordinarily not an offence under this section although it causes discomfort to the animal. Society v. Lowry (1894), 17 Legal News (Montreal), 118.

See also R. v. McDonagh, 28 L. R., Ir., 204; R. v. Cornell (1904), 8 C. C. C., 416; Canadian Society v. Lauzon (1899), 4 C. C. C., 354.

543. Keeping cock-pit.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour, or to both, who builds, makes, maintains or keeps a cock-pit on premises belonging to or occupied by him, or allows a cock-pit to be built, made, maintained or kept on premises belonging to or occupied by him.

2. **Confiscation.**—All cocks found in any such cock-pit, or on the premises wherein such cock-pit is, shall be confiscated and sold for the benefit of the municipality in which such cock-pit is situated. 55-56 V., c. 29, s. 513.

The prosecution shall be commenced within three months from the time of the commission of the offence. Section 1140.

544. Conveyance of cattle without proper rest and nourishment by railways, etc.—No railway company within Canada whose railway forms any part of a line of road over which cattle are conveyed from one province to another province, or from the United States to or through any province, or from any part of a province to another part of the same, and no owner or master of any vessel carrying or transporting cattle from one province to another province, or within any province, or from the United States to or through any province, shall confine the same in any car, or vessel of any description, for a longer period than twenty-eight hours without unlading the same for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unlading and furnishing water and food by storm or other unavoidable cause, or by necessary delay or detention in the crossing of trains.

2. **Reckoning period.**—In reckoning the period of confinement, the time during which the cattle have been confined without such rest, and without the furnishing of food and water, on any connecting railway or vessels from which they are received, whether in the United States or in Canada, shall be included.

3. **Saving.**—The foregoing provisions as to cattle being unladen shall not apply when cattle are carried in any car or ves-

sel in which they have proper space and opportunity for rest, and proper food and water.

4. **Care necessary.**—Cattle so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof or, in case of his default in so doing, by the railway company, or owner or master of the vessel transporting the same, at the expense of the owner or person in custody thereof; and such company, owner or master shall in such case have a lien upon such cattle for food, care and custody furnished and shall not be liable for any detention of such cattle.

5. **Sanitary precautions.**—Where cattle are unladen from cars for the purpose of receiving food, water and rest, the railway company then having charge of the cars in which they have been transported shall, except during a period of frost, clear the floors of such cars, and litter the same properly with clean sawdust or sand before reloading them with live stock.

6. **Penalty.**—Every railway company, or owner or master of a vessel, having cattle in transit, or the owner or person having the custody of such cattle, as aforesaid, who knowingly and wilfully fails to comply with the foregoing provisions of this section, is liable for every such failure on summary conviction to a penalty not exceeding one hundred dollars. 55-56 V., c. 29, s. 514.

No prosecution for this offence, or action for penalties shall be commenced after the expiration of three months from the commission of the offence. Section 1140.

545. Search of premises.—Any peace officer or constable may, at all times enter any premises where he has reasonable grounds for supposing that any car, truck or vehicle as to which any company or person has failed to comply with the provisions of the last preceding section, is to be found, or enter on board any vessel in respect whereof he has reasonable grounds for supposing that any company or person has, on any occasion, so failed.

2. **Obstructing officer.**—Every one who refuses admission to such peace officer or constable is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars and not less than five dollars, and costs, and in default of payment, to thirty days' imprisonment. 55-56 V., c. 29, s. 515.

The prosecution against a railway company for refusing a peace officer or a constable admission to the car shall be commenced within three months from the time of the commission of the offence. Section 1140.

PART IX.

OFFENCES RELATING TO BANK NOTES, COIN AND COUNTERFEIT MONEY.

INTERPRETATION.

546. Definitions.—In this Part, unless the context otherwise requires,—

(a) '**Current gold or silver coin**,' includes any gold or silver coin of any of His Majesty's mints, or gold or silver coin of any foreign prince or state or country, or other gold or silver coin lawfully current, by virtue of any proclamation or otherwise, in any part of His Majesty's dominions;

(b) '**Current copper coin**,' includes copper coin coined in any of His Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of His Majesty's dominions;

(c) '**Counterfeit**' means false, not genuine;

(d) '**Gild**' and '**Silver**' applied to coin, include casing with gold or silver respectively, and washing and colouring by any means whatsoever with any wash or materials capable of producing the appearance of gold or silver respectively;

(e) '**Utter**' includes 'tender' and 'put off';

(f) '**Counterfeit token of value**' means any spurious or counterfeit coin, paper money, inland revenue stamp, postage stamp, or other evidence of value, by whatever technical, trivial or deceptive designation the same may be described, and includes also any coin or paper money, which although genuine has no value as money. 55-56 V., c. 29, s. 460; 63-64 V., c. 46, s. 3.

See sections 955 and 980.
See also R. v. McMahon (1894), 15 N. S. W. L. R., 131; R. v. Hermann (1879), L. R., 4 Q. B. D., 284.

547. Counterfeit raising of denomination.—Any genuine coin prepared or altered so as to resemble or pass for any current coin of a higher denomination is a counterfeit coin.

2. **Counterfeit reducing of size.**—A coin fraudulently filed or cut at the edges so as to remove the milling, and on which a new milling has been added to restore the appearance of the coin, is a counterfeit coin. 55-56 V., c. 29, s. 460.

CERTAIN OFFENCES—WHEN COMPLETE.

548. Complete although intended counterfeiting not perfected.—Every offence of making any counterfeit coin, or of buying, selling, receiving, paying, tendering, uttering or putting off, or of offering to buy, sell, receive, pay, utter or put off, any counterfeit coin is deemed to be complete, although the coin so made or counterfeited, or bought, sold, received, paid, tendered, uttered or put off, or offered to be bought sold, received, paid, tendered, uttered or put off, was not in a fit state to be uttered, or the counterfeiting thereof was not finished or perfected. 55-56 V., c. 29, s. 461.

549. Coin, etc., genuine but valueless. Must be knowledge and fraudulent intent.—In the case of coin or paper money which, although genuine, has no value as money, it is necessary in order to constitute an offence under this Part that there should be knowledge on the part of the person charged that such coin or paper money was of no value as money, and a fraudulent intent on his part in his dealings with or with respect to the same. 63-64 V., c. 46, s. 3.

See R. v. Corey (1895), 1 C. C. C., 161; R. v. Attwood (1891), 20 O. R., 571.

BANK NOTES.

550. Purchasing, receiving or possessing forged bank notes.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, without lawful authority or excuse, the proof whereof shall lie on him, purchases or receives from any person, or has in his custody or possession, any forged bank note, or forged blank bank note whether complete or not, knowing it to be forged. 55-56 V., c. 29, s. 430.

Although the taking possession of or using a counterfeit token of value is an offence under Cr. Code, sec. 569, if such counterfeit be also a forged bank note the prosecution may be under Code sec. 550 for the offence of having a forged bank note in possession knowing it to be forged. R. v. Tutty (1905), 9 C. C. C., 544.

551. Printing circulars, etc., in likeness of notes.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a fine of one hundred dollars or three months' imprisonment, or both, who designs, engraves, prints or in any manner makes, executes, utters, issues, distributes, circulates or uses any business or professional card, notice, placard, circular, hand-bill or advertisement in the likeness or similitude

of any bank note, or any obligation or security of any government or any bank. 55-56 V., c. 29, s. 442.

COIN.

552. Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for life who,—

(a) **Making counterfeit gold or silver coin.**—Makes or begins to make any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin; or,

(b) **Changing into counterfeit.**—Gilds or silvers any coin resembling or apparently intended to resemble or pass for, any current gold or silver coin; or,

(c) **Gilding to resemble coin.**—Gilds or silvers any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined into counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin; or,

(d) **Gilding silver coin.**—Gilds any current silver coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold coin; or,

(e) **Gilding or silvering copper coin.**—Gilds or silvers any current copper coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold or silver coin. 55-56 V., c. 29, s. 462.

See R. v. Lavey (1776), 1 Leach C. C., 153; R. v. Turner (1838), 2 Moody C. C., 42.

See section 980, as to evidence that coin is false or counterfeit.

553. Penalty.—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him,—

(a) **Buying, selling or trading in counterfeit gold or silver coin.**—Buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, at or for a lower rate or value than the same imports, or was apparently intended to import, any counterfeit coin resembling or apparently intended to resemble or pass for any current gold or silver coin; or,

(b) **Importing or receiving into Canada.**—Imports or receives into Canada any counterfeit coin resembling or apparently intended to resemble or pass for, any current gold or silver coin knowing the same to be counterfeit. 55-56 V., c. 29, s. 463.

554. Manufacturing or importing copper coin.—Every one who manufactures in Canada any copper coin, or imports into

Canada any copper coin, other than current copper coin, with the intention of putting the same into circulation as current copper coin, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars for every pound troy weight thereof; and all such copper coin so manufactured or imported shall be forfeited to His Majesty. 55-56 V., c. 29, s. 464.

555. Exportation of counterfeit coin.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority or excuse the proof whereof shall lie on him, exports or puts on board any ship, vessel or boat, or on any railway or carriage or vehicle of any description whatsoever, for the purpose of being exported from Canada, any counterfeit coin resembling or apparently intended to resemble or pass for any current coin or for any foreign coin of any prince, country or state, knowing the same to be counterfeit. 55-56 V., c. 29, s. 465.

556. Making or possessing, etc.—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him, makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession,—

(a) **Matrix, etc., for coinage.**—Any puncheon, counter puncheon, matrix, stamp, die, pattern or mould, in or upon which there is made or impressed or which will make or impress, or which is adapted and intended to make or impress, the figure, stamp or apparent resemblance of both or either of the sides of any current gold or silver coin, or of any coin of any foreign prince, state or country, or any part or parts of both or either of such sides; or,

(b) **Edgers, etc.**—Any edger, edging or other tool, collar, instrument or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any such coin, knowing the same to be so adapted and intended; or,

(c) **Press for coinage.**—Any press for coinage, or any cutting engine for cutting by force of a screw or of any other contrivance, round blanks out of gold, silver or other metal or mixture of metals, or any other machine, knowing such press to be a press for coinage, or knowing such engine or machine to have been used or to be intended to be used for or in order to the false making or counterfeiting of any such coin. 55-56 V., c. 29, s. 466.

Where the defendant employed a die-sinker to make, for a pretended innocent purpose, a die calculated to make shillings, and the die-sinker

suspecting fraud, informed the authorities and under their direction made the die for the purpose of detecting the prisoner, it was held that the defendant was rightly convicted as a principal although the die-sinker was an innocent agent in the transaction. R. v. Bannon (1844), 2 Moody C. C., 309.

See also R. v. Harvey (1871), L. R., 1 C. C. R., 284; R. v. Foster (1836), 7 C & P., 495; R. v. Ridgeley (1778), 1 Leach C. C., 225.

557. Conveying out of mint into Canada.—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him, knowingly conveys out of any of His Majesty's mints into Canada, any puncheon, counter puncheon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press or engine used or employed in or about the coining of coin, or any useful part of any of the several articles aforesaid, or any coin, bullion, metal or mixture of metals. 55-56 V., c. 29, s. 467.

558. Clipping current gold or silver coin.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who impairs, diminishes or lightens any current gold or silver coin, with intent that the coin so impaired, diminished, or lightened may pass for current gold or silver coin. 55-56 V., c. 29, s. 468.

559. Defacing current coin.—Every one is guilty of an indictable offence and liable to one year's imprisonment who defaces any current gold, silver or copper coin by stamping thereon any names or words, whether such coin is or is not thereby diminished or lightened, and afterwards tenders the same. 55-56 V., c. 29, s. 469.

560. Possessing clippings, etc., of current gold or silver coin.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who unlawfully has in his custody or possession any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution or otherwise, which have been produced or obtained by impairing, diminishing or lightening any current gold or silver coin, knowing the same to have been so produced or obtained. 55-56 V., c. 29, s. 470.

561. Penalty. Possessing with intent to utter.—Every one is guilty of an indictable offence and liable to three years' imprisonment who has in his custody or possession, knowing the same to be counterfeit, and with intent to utter the same or any of them,—

(a) **Counterfeit gold or silver coin.**—Any counterfeit coin

resembling or apparently intended to resemble or pass for, any current gold or silver coin; or,

(b) **Counterfeit copper coin.**—Three or more pieces of couterfeit coin resembling, or apparently intended to resemble or pass for, any current copper coin. 55-56 V., c. 29, s. 471.

Where an indictment for having possession of counterfeit coin was, on demurrer, held bad for not alleging that the counterfeit coin "resembled some gold or silver coin then actually current," the order made was that the indictment be quashed, so that another indictment might be preferred, not that the defendants be discharged. R. v. Tierney (1869), 29 U. C. Q. B., 181.

562. Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(a) **Making counterfeit copper coin.**—Makes, or begins to make, any counterfeit coin resembling, or apparently intended to resemble or pass for, any current copper coin; or,

(b) Without lawful authority or excuse, the proof of which shall lie on him, knowingly

(i) **Making, etc., tools for copper coinage.**—Makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession, any instrument, tool or engine adapted and intended for counterfeiting any current copper coin,

(ii) **Dealing in counterfeit copper coin.**—Buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, any counterfeit coin resembling, or apparently intended to resemble or pass for any current copper coin, at or for a lower rate of value than the same imports or was apparently intended to import. 55-56 V., c. 29, s. 472.

563. Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(a) **Making counterfeit gold or silver foreign coin.**—Makes, or begins to make, any counterfeit coin or silver coin resembling, or apparently intended to resemble or pass for, any gold or silver coin of any foreign prince, state or country, not being current coin; or,

(b) without lawful authority or excuse, the proof of which shall lie on him,

(i) **Bringing into Canada.**—Brings into or receives in Canada any such counterfeit coin, knowing the same to be counterfeit,

(ii) **Having in possession.**—Has in his custody or possession any such counterfeit coin, knowing the same to be counterfeit, and with intent to put off the same; or,

(c) **Uttering.**—Utters any such counterfeit coin; or,

(d) **Making counterfeit foreign copper coin.**—Makes any counterfeit coin resembling, or apparently intended to resemble or pass for, any copper coin of any foreign prince, state or country, not being current coin. 55-56 V., c. 29, s. 473.

On a charge of having counterfeit coins in possession, proof that the accused also had in his possession "trade dollars," which, although genuine, were not worth their stamped value, and that he had attempted to put them off as worth their stamped value, is not admissible as shewing intent to put off the counterfeit coin. R. v. Benham (1899), 4 C. C. C., 63.

564. Uttering counterfeit gold or silver coin.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who utters any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin, knowing the same to be counterfeit. 55-56 V., c. 29, s. 474.

According to section 546 to "utter" includes to tender or to put off.

Offering counterfeit coin in payment, though it is refused by the person to whom it is offered, is an "uttering and putting off", and also a tender. R. v. Welch (1851), 20 L. J. M. C., 101; R. v. Ion (1852), 21 L. J. M. C., 166.

If it be proved that the accused uttered either on the same day or at other times, whether before or after the uttering charged, base money either of the same or a different denomination to the same or to a different person, or had other prices of base money about him when he uttered the counterfeit money in question, such will be evidence from which a guilty knowledge may be presumed. R. v. Whiley (1804), 2 Leach C. C., 983.

See also R. v. Forster, Dears 456; R. v. Brown (1861), 21 U. C. Q. B., 330.

565. Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(a) **Uttering light gold or silver coin.**—Utters, as being current, any gold or silver coin of less than its lawful weight, knowing such coin to have been impaired, diminished or lightened, otherwise than by lawful wear; or,

(b) **Uttering false gold or silver coin.**—With intent to defraud utters, as or for any current gold or silver coin, any coin not being such current gold or silver coin, or any medal, or piece of metal or mixed metals, resembling, in size, figure and colour, the current coin as or for which the same is so uttered, such coin, medal or piece of metal or mixed metals so uttered being of less value than the current coin as or for which the same is so uttered; or,

(c) **Uttering counterfeit copper coin.**—Utters any counterfeit coin resembling or apparently intended to resemble or pass for any current copper coin, knowing the same to be counterfeit. 55-56 V., c. 29, s. 475.

The accused, with a guilty knowledge, passed as a half sovereign a medal somewhat resembling that coin, having on the obverse side an impression of the Queen's head as on a half sovereign, but with a different inscription. The medal was lost, and was therefore not seen by the jury, and there was no evidnence as to the appearance of the reverse side. It was held, however, that there was some evidence that the medal resembled a half sovereign in size, figure and color. R. v. Robinson (1865), 34 L. J. M. C., 176.

566. Uttering defaced coin.—Every one who utters any coin defaced by having stamped thereon any names or words is guilty of an offence, and liable, on summary conviction before two justices, to a penalty not exceeding ten dollars. 55-56 V., c. 29, s. 476.

Section 598 provides that no proceeding or prosecution for the offence under this section shall be taken without the consent of the Attorney-General.

567. Uttering uncurrent copper coin.—Every one who utters, or offers in payment, any copper coin, other than current copper coin, is guilty of an offence and liable, on summary conviction, to a penalty of double the nominal value thereof, and in default of payment of such penalty to eight days' imprisonment. R.S., c. 167, s. 33; 55-56 V., c. 29, s. 477.

568. Second offence.—Every one who, after a previous conviction for any offence relating to the coin under this or any other Act, is convicted of any offence specified in this Part is liable,—

(a) **Penalty.**—To imprisonment for life, if fourteen years is the longest term of imprisonment to which he would have been liable had he not been so previously convicted;

(b) **Penalty.**—To fourteen years' imprisonment, if seven years is the longest term of imprisonment to which he would have been liable had he not been so previously convicted;

(c) **Penalty.**—To seven years' imprisonment, if he would not have been liable to seven years' imprisonment had he not been so previously convicted. 55-56 V., c. 29, s. 478.

It is not necessary that any judgment should have been pronounced against the prisoner on the first conviction. R. v. Blaby (1894), 2 Q. B., 170.

Sections 851 and 963 deal respectively with the form of indictment and the procedure to be followed in cases in which a previous conviction is charged.

These sections seem to imply that the second offence must have been committed subsequently to the first conviction.

ADVERTISING COUNTERFEIT MONEY.

569. Penalty.—Every one is guilty of an indictable offence and liable to five years' imprisonment who,—

(a) **Advertising counterfeit money.**—Prints, writes, utters, publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet, handbill or any written or printed matter, advertising, or offering or purporting to advertise or offer for sale, loan, exchange, gift or distribution, or to furnish, procure or distribute, any counterfeit token of value, or what purports to be a counterfeit token of value, or giving or purporting to give, either directly or indirectly, information where, how, of whom or by what means any counterfeit token of value, or what purports to be a counterfeit token of value, may be procured or had; or,

(b) **Using any fictitious name or address.**—In executing, operating, promoting or carrying on any scheme or device to defraud, by the use or by means of any papers, writings, letters, circulars or written or printed matters concerning the offering for sale, loan, gift, distribution or exchange of counterfeit tokens of value, uses any fictitious, false or assumed name or address, or any name or address other than his own right, proper and lawful name; or,

(c) **Taking from the mails any letter to a fictitious address.**—In the execution, operating, promoting or carrying on, of any scheme or device offering for sale, loan, gift, or distribution, or purporting to offer for sale, loan, gift or distribution or giving or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, knowingly receives or takes from the mails, or from the post office, any letter or package addressed to any fictitious, false or assumed name or address, or name other than his own right, proper or lawful name; or,

(d) **Purchasing counterfeit money.**—Purchases, exchanges, accepts, takes possession of or in any way uses, or offers to purchase, exchange, accept, take possession of or in any way use, or negotiates or offers to negotiate with a view to purchasing or obtaining or using any such counterfeit token of value, or what purports so to be. 55-56 V., c. 29, s. 480.

See R. v. Attwood (1891), 20 O. R., 574, 578; R. v. Corey (1895), 1 C. C. C., 161; R. v. Tutty (1905), 9 C. C. C., 544.
See sec. 981 as to evidence on proceedings under this section .

PART X.

ATTEMPTS—CONSPIRACIES—ACCESSORIES.

570 Attempt to commit certain indictable offences.—Every one is guilty of an indictable offence and liable to seven

years' imprisonment who attempts, in any case not hereinbefore provided for, to commit any indictable offence for which the punishment is imprisonment for life, or for fourteen years, or for any term longer than fourteen years. 55-56 V., c. 29, s. 528.

Where on an indictment for a principal offence and for an attempt to commit such an offence, the evidence is wholly directed to the proof of the principal offence, the jury's verdict of guilty of the attempt only will not be set aside although there were no other witnesses in respect of the attempt than those whose testimony, if wholly believed, shewed the commission of the greater offence.

It is within the province of the jury to believe, if it sees fit to do so, a part only of a witness's testimony and to disbelieve the remainder of the same witness's testimony, and it may therefore credit the testimony in respect of a greater offence only in so far as it shews a lesser offence. R. v. Hamilton (1897), 4 C. C. C., 251.

571. Attempt to commit other indictable offences.—Every one who attempts to commit any indictable offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, and no express provision is made by law for the punishment of such attempt, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence attempted to be committed may be sentenced. 55-56 V., c. 29, s. 529.

By virtue of section 583, a person accused of having attempted to commit an indictable offence cannot be tried therefor at the Court of General Sessions of the Peace unless he could be tried for the indictable offence itself at that Court.

As to what is an attempt, see section 72.

See also sections 949, 950 and 951.

An indictment, charging that the accused unlawfully attempted to steal from the person of an unknown person the property of such unknown person, without giving the name of the person against whom the offence was committed, or the description of the property the accused attempted to steal, is sufficient. And where a prisoner is indicted for an attempt to steal, and the proof establishes that the offence of larceny was actually committed, the jury may convict of the attempt, unless the court discharges the jury and directs that the prisoner be indicted for the complete offence (Code sec. 950). R. v. Taylor (1895), 5 C. C. C., 89.

572. Attempt to commit statutory offences.—Every one is guilty of an indictable offence and liable to one year's imprisonment who attempts to commit any offence under any statute for the time being in force and not inconsistent with this Act, or incites or attempts to incite any person to commit any such offence, and for the punishment of which no express provision is made by such statute. 55-56 V., c. 29, s. 530.

If the person incited or advised does not commit the crime in question, the person so inciting or advising him is, nevertheless, guilty of an attempt to commit it. R. v. Gregory (1867), 10 Cox C. C., 459.

But if the person incited or advised does commit the crime, the person so inciting or advising him is, by virtue of secs. 69 and 70, guilty of having committed the offence himself.

See also R. v. Cole (1902), 38 C. L. J., 266.

573. Conspiring to commit indictable offence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, in any case not hereinbefore provided for, conspires with any person to commit any indictable offence. 55-56 V., c. 29, s. 527.

According to sec. 583, a conspiracy to commit an indictable offence cannot be tried by a Court of General Sessions of the Peace unless the indictable offence which it is alleged the accused conspired to commit, is itself triable in such Court.

As to what is conspiracy see Archbold's Crim. Plead (1893), 21st ed., 1100.

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. Mulcaby v. R., L. R., 3 H. L. Eng. & Irish App., 306, 317.

The conspiracy itself is the offence, and whether anything has been done in pursuance of it or not is immaterial. R. v. Gill (1818), 2 B. & Ald., 204.

An indictment for a conspiracy may be tried in any county in which an overt act has been committed in pursuance of the original illegal combination and design. R. v. Connolly (1894), 25 O. R., 151, 169.

Conspiracy is not chargeable against a husband and wife alone, for they are in law one person and are presumed to have but one will. 1 Hawkins, cap. 72, sec. 8.

In a charge of conspiracy when the existence of the common design on the part of the defendants has been proved, evidence is then properly receivable as against both of what was said or done by either in furtherance of the common design. R. v. Connolly (1894), 1 C. C. C., 468.

At a trial for conspiracy, acts similar to those charged, but committed in respect of different persons, may be proved in order to show guilty knowledge on the part of the accused. R. v. McCullough & McGillis (1900), 7 Revue de Jurisprudence, 2.

See also R. v. Charnock (1698), 12 Howard's State Trials, 1397; R. v. Fellowes (1859), 19 U. C. R., 48; R. v. Frawley (1894), 1 C. C. C., 253; R. v. Goodfellow (1906), 10 C. C. C., 424; R. v. Sinclair (1906), 12 C. C. C., 20.

574. Accessories after the fact in certain cases.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, in any case where no express provision is made by this Act for the punishment of an accessory, is accessory after the fact to any indictable offence for which the punishment is, on a first conviction, imprisonment for life, or for fourteen years, or for any term longer than fourteen years. 55-56 V., c. 29, s. 531.

As to who are accessories after the fact, see section 71.

See section 583 as to jurisdiction of Court of General Sessions of the Peace.

According to section 849, a person charged with being accessory after the fact to any offence may be indicted whether the principal offender has or has not been indicted or convicted, or is or is not amenable to justice;

and moreover, he may either be indicted alone as for a substance offence, or jointly with the principal offender.

But if he is indicted as a principal offender only, he cannot then be convicted of having been an accessory after the fact. R. v. Fallon (1862), 32 L. J. M. C., 66.

A person accused of being an accessory after the fact must be proved to have known of the commission of the principal offence, and this knowledge may be presumed from the circumstances of the case. R. v. Burridge (1735), 3 P. Wms., 439.

A person who employs another to assist or relieve a principal offender is guilty as an accessory after the fact. R. v. Jarvis (1837), 2 M. & R., 40.

At common law the term accessory after the fact only applied to felonies for in misdemeanours all were principals. R. v. Tisdale, 20 U.C. Q. B., 273.

Where several persons are tried upon one indictment, some as principals in murder, others as accessories after the fact to the murder, and the principals are convicted of manslaughter only, the prisoners charged as accessories after the fact may be convicted on the same indictment as such accessories to the manslaughter. R. v. Richards (1877), 2 Q.B.D., 311.

575. Accessories after the fact in other cases.—Every one who is accessory after the fact to any indictable offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, if no express provision is made for the punishment of such accessory, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence to which he is accessory may be sentenced.

55-56 V., c. 29, s. 532.

See notes to preceding section.

PART XI.

JURISDICTION.

RULES OF COURT.

576. Power to make rules.—Every superior court of criminal jurisdiction may at any time, with the concurrence of a majority of the judges thereof present at any meeting held for the purpose, makes rules of court, not inconsistent with any statute of Canada, which shall apply to all proceedings relating to any prosecution, proceeding or action instituted in relation to any matter of a criminal nature, or resulting from or incidental to any such matter, and in particular,—

(a) **Regulating sittings.**—For regulating the sittings of the court or of any division thereof or of any judge of the court sitting in chambers, except in so far as the same are already regulated by law;

(b) **Regulating practice.**—For regulating in criminal matters the pleading, practice and procedure in the court, including the subjects of *mandamus, certiorari, habeas corpus,* prohibition, *quo warranto,* bail and costs, and the proceedings on application to a justice to state and sign a case for the opinion of the courts as to a conviction, order, determination or other proceeding before him; and,

(c) **General.**—Generally for regulating the duties of the officers of the court and every other matter deemed expedient for better attaining the ends of justice and carrying the provisions of the law into effect.

2. **To be laid before Parliament, etc.**—Copies of all rules made under the authority of this section shall be laid before both Houses of Parliament at the session next after the making thereof, and shall also be published in the *Canada Gazette.*

3. **Authority in Ontario for making.**—In the province of Ontario the authority for the making of rules of court applicable to superior courts of criminal jurisdiction in the province is vested in the supreme court of judicature, and such rules may be made by the said court at any time with the concurrence of a majority of the judges thereof present at a meeting held for the purpose. 55-56 V., c. 29, s. 533; 63-64 V., c. 46, s 3.

GENERAL.

577. Jurisdiction of courts generally.—Unless otherwise specially provided in this Act, every court of criminal jurisdiction in any province is competent to try any crime or offence within the jurisdiction of such court to try, wherever committed within the province, if the accused is found or apprehended or is in custody within the jurisdiction of such court or if he has been commtted for trial to such court or ordered to be tried before such court, or before any other court, the jurisdiction of which has by lawful authority been transferred to such first mentioned court under any Act for the time being in force. 55-56 V., c. 29, s. 640.

Whenever the accused has been committed by a magistrate or justice of the peace for trial before the Court in any district, the court sitting in such district has jurisdiction to try the case. R. v. Hogle (1896), 5 C. C. C., 53.

The power conferred on a magistrate under Code sec. 665 of ordering the accused person brought before him, charged with an offence committed out of his territorial jurisdiction, to be taken before some justice having jurisdiction in the place where the offence was committed, is permissive only. Re R. v. Burke (1900), 5 C. C. C., 29.

578. Certain persons not to try case under s. 501.—No

person who is a master, or the father, son or brother of a master in the particular manufacture, trade or business, in or in connection with which any offence under section five hundred and one is charged to have been committed, shall act as a magistrate or justice, in any case of complaint or information under that section, or as a member of any court for hearing any appeal in any such case. R.S., c. 173, s. 12.

INDICTABLE OFFENCES.

579. Questions raised at trial may be reserved for decision.—Any judge or other person presiding at the sittings of a court at which any person is tried for an indictable offence under this Act, whether he is the judge of such court or is appointed by commission or otherwise to hold such sittings, may reserve the giving of his final decision on questions raised at the trial; and his decision, whenever given, shall be considered as if given at the time of the trial. 55-56 V., c. 29, s. 753.

580. Jurisdiction of superior courts.—Every superior court of criminal jurisdiction and every judge of such court sitting as a court for the trial of criminal causes, and every court of oyer and terminer and general gaol delivery has power to try any indictable offence. 55-56 V., c. 29, s. 538.

The County Courts of New Brunswick are not courts of Oyer and Terminer and general gaol delivery. R. v. Wright (1896), 2 C. C. C., 83.

581. Option for trial without jury in trade conspiracy cases.—Where an indictment is found against any person for any of the offences mentioned in section four hundred and ninety-eight, the defendant or person accused shall have the option to be tried before the judge presiding at the court at which the indictment is found, or the judge presiding at any subsequent sitting of such court, or at any court where the indictment comes on for trial, without the intervention of a jury; and in the event of such option being exercised the proceedings subsequent thereto shall be regulated in so far as may be applicable by Part XVIII. 52 V., c. 41. s. 4.

S. 1012

582. Jurisdiction of sessions and certain other courts.—Every court of general or quarter sessions of the peace, when presided over by a superior court judge, or a county or district court judge, or in the cities of Montreal and Quebec by a recorder or judge of the sessions of the peace, and in the province of New Brunswick every county court judge has power to try any indict-

able offence except as hereinafter provided. 55-56 V., c. 29, s. 539; 56 V., c. 32, s. 1.

The courts mentioned here have their power limited by section 583.

The judgments of the Courts of General Sessions in Ontario are public records, and the clerk of the peace holds them as their statutory custodian in the interests of the public generally and not as deputy officer of the Crown. Any person interested in the indictments and records of the Court of General Sessions is entitled of right to inspect them.

An accused person tried and acquitted in such court is entitled to a copy of the record of such acquittal and of the indictment without the fiat of or intervention by the Attorney-General of the province, and a mandamus will lie to the clerk of the peace to compel the delivery to him of certified copies. R. v. Scully (1901), 5 C. C. C., 1.

583. Idem.—No court mentioned in the last preceding section has power to try any offence under sections,—

(a) seventy-four, treason; seventy-six, accessories after the fact to treason; seventy-seven, seventy-eight, and seventy-nine, treasonable offences; eighty, assaults on the King; eighty-one, inciting to mutiny; eighty-five, unlawfully obtaining and communicating official information; eighty-six, communicating information acquired in office; or,

(b) one hundred and twenty-nine, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and thirty, administering, taking or procuring the taking of other unlawful oaths; one hundred and thirty-four, seditious offences; one hundred and thirty-five, libels on foreign sovereigns; one hundred and thirty-six, spreading false news; or,

(c) one hundred and thirty-seven to one hundred and forty inclusive, piracy; or,

(d) one hundred and fifty-six, judicial, etc., corruption; one hundred and fifty-seven, corruption of officers employed in prosecuting offenders; one hundred and fifty-eight, frauds upon the Government; one hundred and sixty, breach of trust by a public officer; one hundred and sixty-one, municipal corruption; one hundred and sixty-two (a), selling offices; or,

(e) two hundred and sixty-three, murder; two hundred and sixty-four, attempt to murder; two hundred and sixty-five, threat to murder; two hundred and sixty-six, conspiracy to murder; two hundred and sixty-seven, accessory after the fact to murder; or,

(f) two hundred and ninety-nine, rape; three hundred, attempt to commit rape; or,

(g) three hundred and seventeen to three hundred and thirty-four, defamatory libel; or,

(h) four hundred and ninety-eight, combination in restraint of trade; or,

(i) conspiring or attempting to commit, or being accessory after the fact to any of the offences in this section before mentioned; or,

(j) any indictment for bribery or undue influence, personation or other corrupt practice under the Dominion Elections Act. 55-56 V., c. 29, s. 540; 57-58 V., c. 57, s. 1; 63-64 V., c. 46, s. 3.

A County Court in New Brunswick has jurisdiction to try the offence of attempting to have carnal knowledge of a girl under fourteen, although the evidence discloses the offence of attempting to commit rape, as to which said court has no jurisdiction. R. v. Wright (1896), 2 C. C. C., 83.
See also Ex parte Might (1896), 34 N. B. R., 127.

SPECIAL JURISDICTION.

584. For the purposes of this Act,—

(a) **On water between jurisdictions.**—Where the offence is committed in or upon any water, tidal or other, or upon any bridge, between two or more magisterial jurisdictions, such offence may be considered as having been committed in either of such jurisdictions;

(b) **Near boundary between jurisdictions.**—Where the offence is committed on the boundary of two or more magisterial jurisdictions, or within the distance of five hundred yards from any such boundary, or is begun within one magisterial jurisdiction and completed within another, such offence may be considered as having been committed in any one of such jurisdictions;

(c) **In respect to mail or vehicle or vessel passing through several jurisdictions.**—Where the offence is committed on or in respect to a mail, or a person conveying a post letter bag, post letter or anything sent by post, or on any person, or in respect of any property, in or upon any vehicle employed in a journey, or on board any vessel employed on any navigable river, canal or other inland navigation, the person accused shall be considered as having committed such offence in any magisterial jurisdiction through which such vehicle or vessel passed in the course of the journey or voyage during which the offence was committed; and where the centre or other part of the road, or any navigable river, canal or other inland navigation along which the vehicle or vessel passed in the course of such journey or voyage, is the boundary of two or more magisterial jurisdictions, the person accused of having committed the offence may be considered as having committed it in any one of such jurisdictions. 55-56 V., c. 29, s. 553; 63-64 v., c. 46, s. 3.

The offence of fraudulent conversion of the proceeds of a valuable security consists of a continuity of acts—the reception of the valuable se-

curity, the collection of the proceeds, the conversion of the proceeds, and lastly, the failure to account for the proceeds; and where the beginning of the operation is in one district and the continuation and completion are in another district, the accused may be arrested and proceeded against in either district. R. v. Hogle (1896), 5 C. C. C., 53.

Where the offence charged was the making, circulation and publication of false statements of the financial position of a company, and it appeared that the statements were mailed from a place in Ontario to the parties intended to be deceived in Montreal, the offence, although commenced in Ontario, is completed in the Province of Quebec by the delivery of the letters to the parties to whom they were addressed.

In such case the Courts of the Province of Quebec have jurisdiction to try the accused, if he has been duly committed for trial by a magistrate of the district. R. v. Gillespie (1898), 2 C. C. C., 309.

Magistrates cannot give themselves jurisdiction or retain jurisdiction by finding a particular fact one way, if the evidence is clearly the other way. R. v. Davy (1900), 4 C. C. C., 23, 33; White v. Feast (1872), L. R., 7 Q. B., 353.

Although the arrest has been illegally made under an invalid warrant, jurisdiction attaches to the magistrate when the person arrested is brought before him; and the subsequent detention and commitment may be justified under the order then made by the magistrate. McGuiness v. Dafoe (1896), 3 C. C. C., 139.

585. Offences in unorganized tracts in Ontario.—All offences committed in any of the unorganized tracts of country in the province of Ontario, including lakes, rivers and other waters therein, not embraced within the limits of any organized county, or within any provisional judicial district, may be laid and charged to have been committed and may be inquired of, tried and punished within any county of such province; and such offences shall be within the jurisdiction of any court having jurisdiction over offences of the like nature committed within the limits of such county, before which court such offences may be prosecuted; and such court shall proceed therein to trial, judgment and execution or other punishment for such offence, in the same manner as if such offence had been committed within the county where such trial is had.

2. **Provisional districts or new counties within.**—When any provisional judicial district or new county is formed and established in any of such unorganized tracts, all offences committed within the limits of such provisional judicial district or new county, shall be inquired of, tried and punished within the same in like manner as such offences would have been inquired of, tried and punished if this section had not been passed.

3. **Where committed to gaol.**—Any person accused or convicted of any offence in any such provisional district may be committed to any common gaol in the province of Ontario. 55-56 V., c. 29, s. 555.

586. All offences committed in any part of Canada not in a

province duly constituted as such and not in the Yukon Territory may be inquired of and tried within any district, county or place in any province so constituted or in the Yukon Territory as may be most convenient.

2. **Jurisdiction.**—Such offences shall be within the jurisdiction of any court having jurisdiction over offences of the like nature committed within the limits of such district, county or place.

3. **Procedure.**—Such court shall proceed to trial, judgment and execution or other punishment for any such offence in the same manner as if such offence had been committed within the district, county or place where the trial is had. 62-63 V., c. 47, s. 1.

587. Provincial courts competent.—The several courts of criminal jurisdiction in the provinces aforesaid, and in the Yukon Territory, including justices, shall have the same powers, jurisdiction and authority in case of such offences as they respectively have with reference to offences within their ordinary jurisdiction as provincial or territorial courts. 62-63 V., c. 47, s. 2.

588. Offences committed in the district of Gaspe.—Whenever any offence is committed in the district of Gaspé, the offender, if committed to gaol before trial, may be committed to the common gaol of the county in which the offence was committed or may, in law, be deemed to have been committed, and if tried before the Court of King's Bench, he shall be so tried at the sitting of such court held in the county to the gaol of which he has been committed, and if imprisoned in the common gaol after trial he shall be so imprisoned in the common gaol of the county in which he has been tried. 55-56 V., c. 29, s. 556.

PART XII.

SPECIAL PROCEDURE AND POWERS.

OFFENCES REQUIRING STATUTE.

589. Offences against Imperial statutes.—No person shall be proceeded against for any offence against any Act of the Parliament of England, of Great Britain, or of the United Kingdom of Great Britain and Ireland, unless such Act is, by the express terms thereof or of some other Act of such Parliament, made applicable to Canada or some portion thereof as part of His Majesty's dominions or possessions. 55-56 V., c. 29, s. 5.

590. Prosecutions for trade conspiracy.—No prosecution shall be maintainable against any person for conspiracy in refusing

to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offence punishable by statute. 55-56 V., c. 29, s. 518.

In a case in which it was proved that the members of a trade-union had conspired together to injure a non-union workman by depriving him of his employment, it was held that the conspirators had been guilty of a misdemeanour, and that their act was not for the purpose of trade combination within the meaning of the law. R. v. Gibson (1889), 16 O. R., 704.

CASES REQUIRING CONSENT.

591. Offences within the jurisdiction of the Admiralty.—Proceedings for the trial and punishment of a person who is not a subject of His Majesty, and who is charged with any offence committed within the jurisdiction of the Admiralty of England, shall not be instituted in any court in Canada except with the leave of the Governor General and on his certificate that it is expedient that such proceedings should be instituted. 55-56 V., c. 29, s. 542.

The laying of the information is the institution of the proceedings. Thorpe v. Priestnell (1897), 1 Q. B., 159.

The criminal jurisdiction of the Admiralty of England extends over British ships not only on the high seas, but also on rivers below the bridges where the tide ebbs and flows and where great ships go, though at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction if invoked. R. v. Anderson (1868), 11 Cox C. C., 198; R. v. Carr (1882), 15 Cox C. C., 129.

A person on board a British ship, whether a British subject or a foreigner, is subject to the laws of Great Britain so long as his ship is on the high seas or in foreign rivers below bridges where the tide ebbs and flows and where great ships go. R. v. Anderson (1868), L. R., 1 C. C. R., 161; R. v. Lopez, R. v. Sattler (1858), 27 L. J. M. C., 48; R. v. Lesley (1860), 29 L. J. M. C., 97.

And the fact that a foreigner is illegally brought on board his ship does not affect his amenability to the laws of England for an offence, there subsequently committed, unless it was one done merely for the purpose of freeing himself from the unlawful restraint. R. v. Seberg (1870) L. R., 1 C. C. R., 264.

Formerly a foreigner on board a foreign ship could not be convicted in England even for an offence committed within the territorial waters of Great Britain. R. v. Keyn (1876), L. R. 2 Ex. D., 63.

This state of affairs was remedied by the Territorial Waters Jurisdiction Act, 1878.

To show that a ship is a British ship it is not necessary to produce the register or a copy thereof; it is sufficient to show orally that she belongs to British owners and carries the British flag. R. v. Allen (1866), 10 Cox C. C., 405.

See also R. v. Bjornsen (1865), 10 Cox C. C., 74.

No count shall be deemed objectionable or insufficient for the reason only that it does not, in cases where the consent of any person, official or authority is required before a prosecution can be instituted, state that such consent has been obtained. Section 855 (h).

592. Disclosing official secrets.—No person shall be prosecuted for the offence of unlawfully obtaining and communicating official information, without the consent of the Attorney General or of the Attorney General of Canada. 55-56 V., c. 29, s. 543.

The indictment need not allege the consent here mentioned. Sec. 855 (h).

593. Judicial corruption.—No one holding any judicial office shall be prosecuted for the offence of judicial corruption, without the leave of the Attorney General of Canada. 55-56 V., c. 29, s. 544.

See note to preceding section.

Evidence of corrupt motive must be adduced in order to obtain leave to exhibit a criminal information against a justice of the peace for malfeasance of office. R. v. Currie (1906), 11 C. C. C., 343.

594. Making explosive substances.—If any person is charged under section one hundred and thirteen, before a justice with the offence of making or having explosive substances, no further proceeding shall be taken against such person without the consent of the Attorney General except such as the justice thinks necessary, by remand or otherwise, to secure the safe custody of such person. 55-56 V., c. 29, s. 545.

The indictment need not allege the consent here mentioned. Sec. 855 (h).

595. Sending unseaworthy ship to sea.—No person shall be prosecuted for the offence of sending an unseaworthy ship to sea on a voyage without the consent of the Minister of Marine and Fisheries. 56 V., c. 32, s. 1.

596. Criminal breach of trust.—No proceeding or prosecution against a trustee for a criminal breach of trust shall be commenced without the sanction of the Attorney General. 55-56 V., c. 29, s. 547.

597. Fraudulent acts of vendor or mortgagor.—No prosecution for concealing any settlement, deed, will, or other instrument material to any title, or any encumbrance, or falsifying any pedigree upon which any title depends, shall be commenced without the consent of the Attorney General, given after previous notice to the person intended to be prosecuted of the application to the Attorney General for leave to prosecute. 55-56 V., c. 29, s. 548.

598. Uttering defaced coin.—No proceeding or prosecution for the offence of uttering any coin defaced by having stamped thereon any names or words, shall be taken without the consent of the Attorney General. 55-56 V., c. 29, s. 549.

PROVISIONS AS TO ONTARIO AND NOVA SCOTIA.

599. Practice in High Court of Justice in Ontario.—The practice and procedure in all criminal cases and matters in the High Court of Justice of Ontario which are not provided for by this Act, shall be the same as the practice and procedure in similar cases and matters heretofore. 55-56 V., c. 29, s. 754.

600. Commission of court of assize, etc.—If any general commission for the holding of a court of assize and *nisi prius*, oyer and terminer or general gaol delivery is issued by the Governor General for any county or district in the province of Ontario, such commission shall contain the names of the justices of the Supreme Court of Judicature for Ontario, and may also contain the names of the judges of any of the county courts in Ontario, and of any of His Majesty's counsel learned in the law duly appointed for the province of Upper Canada, or for the province of Ontario, and if any such commission is for a provisional judicial district such commission may contain the name of the judge of the district court of the said district.

2. **Who shall preside.**—The said courts shall be presided over by one of the justices of the said Supreme Court, or in their absence by one of such county court judges or by one of such counsel, or in the case of any such district by the judge of such district court. 55-56 V., c. 29, s. 755.

The Governor-General of the Dominion of Canada, exercising the prerogative right of the Crown, can issue a commission to hold a court of Oyer and Terminer, and General Gaol Delivery, already established in a province. R. v. Amer (1878), 42 U. C. Q. B., 391.

The Lieutenant-Governor of a province, as well as the Governor-General, has the power to issue commissions to hold Courts of Assize. R. v. Amer, supra.

601. Gaol delivery by court of General Sessions.—It shall not be necessary for any court of general sessions in the province of Ontario to deliver the gaol of all prisoners who are confined upon charges of theft, but the court may leave any such cases to be tried at the next court of oyer and terminer and general gaol delivery, if, by reason of the difficulty or importance of the case, or for any other cause, it appears to it proper so to do. 55-56 V., c. 29, s. 756.

The Court of General Sessions is not properly an inferior court; it is a Court of Oyer and Terminer. R. v. McDonald (1871), 31 U. C. Q. B., 337.

It is, however, a court which does not possess any greater powers than are conferred upon it by statute. It has a general jurisdiction over offences attended with a breach of the peace, and has also such other powers as are conferred upon it by statute. R. v. Dunlop, 15 U. C. Q. B., 118; R. v. McDonald, supra.

602. Calendar of criminal cases in Nova Scotia.—In the province of Nova Scotia a calendar of the criminal cases shall be sent by the Clerk of the Crown to the grand jury in each term, together with the depositions taken in each case and the names of the different witnesses. 63-64 V., c. 46, s. 3.

See R. v. Townsend (1896), 3 C. C. C., 29; R. v. Hamilton (1898), 2 C. C. C., 178.

The omission to send to a grand jury the depositions taken on the preliminary enquiry as required in Nova Scotia under this section will not invalidate an indictment found without such depositions. R. v. Turpin (1904), 8 C. C. C., 59.

603. Sentences in Nova Scotia.—A judge of the Supreme Court of Nova Scotia may sentence convicted criminals on any day of the sittings at Halifax, as well as in term time. 55-56 V., c. 29, s. 761.

POWERS GENERAL OF CERTAIN OFFICIALS.

604. Officials with powers of two justices.—The Judge of the Sessions of the Peace for the city of Quebec, the Judge of the Sessions of the Peace for the city of Montreal, and every recorder, police magistrate, district magistrate or stipendiary magistrate appointed for any territorial division, and every magistrate authorized by the law of the province in which he acts to perform acts usually required to be done by two or more justices, may do alone whatever is authorized by this Act to be done by any two or more justices. 55-56 V., c. 29, s. 541.

Where a statute declares that the jurisdiction of a county stipendiary magistrate shall extend throughout the "whole of the county," it is to be construed as including jurisdiction in any incorporated town within the county limits notwithstanding the fact that there is a stipendiary magistrate for such town alone, unless the latter's jurisdiction is made exclusive. R. v. Giovaneti (1901), 5 C. C. C., 157.

605. Clerk of the Peace, Montreal.—In the district of Montreal the Clerk of the Peace or Deputy Clerk of the Peace shall have all the powers of a justice under Parts XIII. and XIV., and under sections six hundred and twenty-nine to six hundred and forty-three, inclusive. 58-59 V., c. 40, s. 1.

606. Jurisdiction as to prize fights.—Every judge of a superior court or of a county court, judge of the sessions of the peace, stipendiary magistrate, police magistrate, and commissioner of police of Canada, shall, within the limits of his jurisdiction as such judge, magistrate or commissioner, have all the powers of a justice with respect to offences against provisions of this Act as to prize fights. R.S., c. 153, s. 10.

607. Preserving order in court.—Every judge of the sessions of the peace, chairman of the court of general sessions of the peace, police magistrate, district magistrate or stipendiary magistrate, shall have such and like powers and authority to preserve order in courts held by them during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any court in Canada, or by the judges thereof, during the sittings thereof. 55-56 V., c. 29, s. 908.

Justices of the Peace as such have no power to commit for contempt. Stone's Justices Manual (1902), 733.

But a justice may order that a person disturbing the proceedings in his court, and refusing to desist, be removed from the court. Clissold v. Machell, 26 U. C. Q. B., 422. R. v. Lefroy, L. R., 8 Q. B., 134.

If a person uses any disrespectful or unmannerly expressions in the face of the court, or uses any words which directly tend to a breach of the peace, he may be required to find sureties for his good behaviour. 1 Lev., 107.

See on this subject Seager's Magistrates Manual (1901), p. 177. Young v. Taylor, 20 On V. App. R., 645.

608. Resistance to execution of prooess.—Every judge of the sessions of the peace, chairman of the court of general sessions of the peace, recorder, police magistrate, district magistrate or stipendary magistrate, whenever any resistance is offered to the execution of any summons, warrant of execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other courts in like cases. 55-56 V., c. 29, s. 909; 56 V., c. 32, s. 1.

SPECIAL POWERS AND DUTIES OF CERTAIN OFFICIALS.

609. Persons carrying weapon in proclaimed district, arrest of.—Any commissioner or justice, constable or peace officer, or any person acting under a warrant, in aid of any constable or peace officer, may arrest and detain any person employed on any public work, found carrying any weapon, within any place in which Part III. is, at the time, in force, at such time and in such manner as in the judgment of such commissioner, justice, constable or peace officer, or person acting under a warrant, afford just cause of suspicion that it is carried for purposes dangerous to the public peace.

2. **Committal.**—The justice or commissioner arresting such person, or before whom he is brought, may commit him for trial unless he gives sufficient bail for his appearance at the next term or sitting of the court before which the offence can be

tried, to answer to any indictment to be then preferred against him. R.S., c. 151, s. 7.

610. Search warrant for weapon.—Any commissioner or any justice having authority within any place in which Part III. is at the time in force, upon oath before him of belief of the deponent that any weapon is in the possession of any person or in any house or place contrary to the provisions of Part III., may issue his warrant to any constable or peace officer to search for and seize the same.

2. **Seizure of same.**—Such constable or peace officer, or any person in his aid, may search for and seize the same in the possession of any person, or in any such house or place. R.S., c. 151, s. 8.

611. Right of entry for search.—If admission to any such house or place is refused after demand, such constable or peace officer and any person in his aid, may enter the same by force, by day or by night, and seize any such weapon and deliver it to such commissioner or justice.

2. **Confiscation of weapon.**—Unless the person in whose possession or in whose house or premises the same is found, within four days next after the seizure, proves to the satisfaction of such commissioner or justice that the weapon so seized was not in his possession or in his house or place contrary to the provisions of Part III., such weapon shall be forfeited to the use of His Majesty. R.S., c. 151, s. 9.

612. Disposal of forfeited arms.—All weapons declared forfeited under Part III. shall be sold or destroyed under the direction of the commissioner or justice by whom or by whose authority the same are seized, or before whom the same are brought, and the proceeds of such sale, after deducting necessary expenses, shall be received by such commissioner and paid over by him to the Minister of Finance for the public uses of Canada. R.S., c. 151, s. 10.

613. Search for and seizure of liquors in proclaimed district.—If any person makes oath or affirmation before any such commissioner or justice, that he has reason to believe, and does believe, that any intoxicating liquor with respect to which a violation of the provisions of section 150 has been committed or is intended to be committed is on board of any steamboat, vessel, boat, canoe, raft, or other craft, or in any railway carriage or freight car, or in any carriage, vehicle or other conveyance,

or in any railway station, freight shed or other railway building, or in or about any other building or premises, or in any other place within the limits specified in any proclamation under the said Part, the commissioner or justice shall issue a search warrant to any sheriff, police officer, constable or bailiff, who shall forthwith proceed to search the steamboat, vessel, boat, canoe, raft or other craft, or the railway carriage, freight car, or the carriage, vehicle or conveyance, or the railway station, freight shed, or other railway building, or the other building or premises, or the place described in such search warrant.

2. **Seized liquor securely kept.**—If any intoxicating liquor is found therein or thereon the person executing such search warrant shall seize the intoxicating liquor and the barrels, casks, jars, bottles or other packages in which it is contained and shall keep it and them secure until final action is had thereon.

3. **Information when there is no shop or bar.**—No dwelling house in which, or in part of which, or on the premises whereof, a shop or bar, is not kept, shall be searched, unless the said informant also makes oath or affirmation that some offence in violation of the provisions of the said section has been committed therein or therefrom within one month next preceding the time of making his said information for a search warrant. R.S., c. 151, s. 16.

614. Owner to be summoned.—The owner, keeper or person in possession of the intoxicating liquor so seized, if he is known to the officer seizing it, shall be brought forthwith before the commissioner or justice who issue the search warrant, and if it appears to the satisfaction of the commissioner or justice that a violation of the provisions of the said section has been committed, or was intended to be committed, with respect to such intoxicating liquor, it shall be declared forfeited, with any package in which it is contained, and shall be destroyed by authority of the written order to that effect of the commissioner or justice, and in his presence or in the presence of some person appointed by him to witness the destruction thereof.

2. **Attestation of destruction.**—Such commissioner or justice, or the person so appointed by him, and the officer by whom the said intoxicating liquor has been destroyed, shall jointly attest, in writing upon the back of the said order, the fact that it has been destroyed. R.S., c. 151, s. 16.

615. Owner, keeper or possessor may be convicted at once.—The owner, keeper or person in possession of any in-

toxicating liquor so seized and forfeited may be convicted of an offence against the said section without any further information laid or trial had, and shall be liable to the penalties mentioned in section one hundred and fifty-one. R.S., c. 151, s. 16.

616. Procedure if owner is unknown.—If the owner, keeper or possessor of intoxicating liquor seized as aforesaid, is unknown to the officer seizing the same, it shall not be condemned and destroyed until the fact of such seizure, with the number and description of the packages, as near as may be, has been advertised for two weeks by posting up a written or a printed notice and description thereof, in at least three public places, in the place where it was seized.

2. **When liquor may be delivered to owner.**—If it is proved within such two weeks to the satisfaction of the commissioner or justice by whose authority such intoxicating liquor was seized, that with respect to such intoxicating liquor no violation of the provisions of section one hundred and fifty has been committed or is intended to be commiteed, it shall not be destroyed, but shall be delivered to the owner, who shall give his receipt therefor in writing upon the back of the search warrant, which shall be returned to the commissioner or justice who issued the same.

3. **Forfeiture and destruction in other cases.**—If after such advertisement as aforesaid, it appears to such commissioner or justice that a violation of the provisions of the said section has been committed or is intended to be committed, then such intoxicating liquor, with any package in which it is contained, shall be forfeited and destroyed as hereinbefore provided. R.S., c. 151, s. 17.

617. Evidence of precise description of liquor not necessary.—In any prosecution under this Act for any offence with respect to intoxicating liquor, it shall not be necessary that any witness should depose directly to the precise description of the liquor with respect to which the offence has been committed, or to the precise consideration therefor, or to the fact of the offence having been committed with his participation or to his own personal and certain knowledge; but the commissioner or justice trying the case, so soon as it appears to him that the circumstances in evidence sufficiently establish the offence complained of, shall put the defendant on his defence, and in default of such evidence being rebutted, shall convict the defendant accordingly. R.S., c. 151, s. 19.

618. Summary convictions.—Any commissioner or justice may hear and determine, in manner provided by Part XV., any case arising within his jurisdiction.

2. **Part to apply.**—All the provisions of Part XV. shall, in so far as they are not inconsistent with this Part, apply to every commissioner or justice mentioned in this Part or empowdered to try offenders against Part III.

3. **Commissioner a justice under Part XV.**—Every such commissioner shall be deemed a justice within the meaning of part XV., whether he is or is not a justice for other purposes. R.S., c. 151, ss. 20 and 21.

619. Justices may disarm persons attending meeting.—Any justice within whose jurisdiction any public meeting is appointed to be held may demand, have and take of and from any person attending such meeting, or on his way to attend the same, without his consent and against his will, by such force as is necessary for that purpose, any offensive weapon, such as firearms, swords, staves, bludgeons, or the like, with which any such person is so armed, or which any such person has in his possession. R.S., c. 152, s. 1.

620. Restitution of weapons.—Upon reasonable request to any justice to whom any such weapon has been peaceably and quietly delivered as aforesaid, made on the day next after the meeting has finally dispersed, and not before, such weapon shall, if of the value of one dollar or upwards, be returned by such justice to the person from whom the same was received. R.S., c. 152, s. 2.

621. No liability in case of accidental loss.—No such justice shall be held liable to return any such weapon, or make good the value thereof, if the same, by unavoidable accident, has been actually destroyed or lost out of the possession of such justice without his wilful default. R.S., c. 152, s. 3.

622. Weapon, not a pistol, to be impounded.—The court or justice before whom any person is convicted of any offence against the provisions of sections one hundred and twenty to one hundred and twenty-four inclusive, shall impound the weapon for carrying which such person is convicted, and if the weapon is not a pistol, shall cause it to be destroyed.

2. **If pistol, to be handed over to municipality.**—If the weapon is a pistol, the court or justice shall cause it to be handed over to the corporation of the municipality in which the conviction takes place, for the public uses of such corporation.

3. **To lieutenant governor, when.**—If the conviction takes place where there is no municipality, the pistol shall be handed over to the lieutenant governor of the province in which the conviction takes place, for the public uses thereof in connection with the administration of justice therein. R.S., c. 148, s. 7.

623. Seizure of copper coin unlawfully imported.—Any two or more justices, on oath that any copper coin has been unlawfully manufactured or imported shall cause the same to be seized and detained, and shall summon the person in whose possession the same is found, to appear before them.

2. **Forfeiture on proof.**—If it appears to their satisfaction, on evidence, that such copper coin has been manufactured or imported in violation of this Act, such justices shall declare the same forfeited, and shall place the same in safe keeping to await the disposal of the Governor General, for the public uses of Canada. R.S., c. 167, s. 29.

624. Knowledge.—Penalty.—If it appears, to the satisfaction of such justices, that the person in whose possession such copper coin was found, knew the same to have been so unlawfully manufactured or imported, they may condemn him to pay the penalty provided by Part IX., for manufacturing or importing copper coin, with costs, and may cause him to be imprisoned for a term not exceeding two months, if such penalty and costs are not forthwith paid. R.S., c. 167, s. 30.

625. Recovery of penalty from the owner in certain cases.—If it appears, to the satisfaction of such justices, that the person in whose possession such copper coin was found was not aware of it having been so unlawfully manufactured or imported, the penalty may be recovered from the owner therof by any person who sues for the same in any court of competent jurisdiction. R.S., c. 167, s. 31.

626. Officer of Customs may seize the coin.—Any officer of Customs may seize any copper coin imported or attempted to be imported into Canada in violation of this Act, and may detain the same as forfeited, to await the disposal of the Governor General, for the public uses of Canada. R.S., s. 167, s. 32.

627. Proceedings when prize fight anticipated.—Arrest.—If, at any time, the sheriff of any county, place or district in Canada, any chief of police, any police officer, or any constable or other peace officer has reason to believe that any person within his bailiwick or jurisdiction is about to engage as principal in any prize-fight within Canada, he shall forthwith arrest such person and take him before a justice, and shall forth-

with make complaint in that behalf, upon oath, before such justice.

2. **Recognizance.**—Such justice shall inquire into the charge, and if he is satisfied that the person so brought before him was, at the time of his arrest, about to engage as a principal in a prize-fight, he shall require him to enter into a recognizance, with sufficient sureties, in a sum not exceeding five thousand dollars and not less than one thousand dollars, conditioned that he will not engage in any such fight within one year from and after the date of such arrest.

3. **Commitment in default.**—In default of such recognizance, the justice before whom the accused has been brought shall commit the accused to the gaol of the county, district or city within which such inquiry takes place, or if there is no common gaol there, then to the common gaol nearest to the place where such inquiry is had, there to remain for the space of one year or until he gives such recognizance with such sureties. R.S., c. 153, s. 6.

628. Sheriff may summon posse.—If any sheriff has reason to believe that a prize-fight is taking place or is about to take place within his jurisdiction as such sheriff, or that any persons are about to come into Canada at a point within his jurisdiction, from any place outside of Canada, with intent to engage in, or to be concerned in, or to attend any prize-fight within Canada, he shall forthwith summon a force of the inhabitants of his district or county sufficient for the purpose of suppressing and preventing such fight.

2. **Prevent the fight and arrest persons present.**—Such sheriff shall with their aid, suppress and prevent the same, and arrest all persons present thereat, or who come into Canada as aforesaid, and shall take them before a justice to be dealt with according to law. R.S., c. 153, s. 7.

629. Information for search warrant.—Form.—Any justice who is satisfied by information upon oath in form 1, that there is reasonable ground for believeing that there is in any building, receptacle, or place,—

(a) anything upon or in respect of which any offence against this Act has been or is suspected to have been committed; or,

(b) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence; or,

(c) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant;

Search warrant.—May at any time issue a warrant under his hand authorizing some constable or other person named therein to search such building, receptacle or place, for any such thing, and to seize and carry it before the justice issuing the warrant, or some other justice for the same territorial division to be by him dealt with according to law. 55-56 V., c. 29, s. 569.

A warrant to search for stolen goods was addressed to "all or any of the constables or other peace officers in the county of Cape Breton," and it authorized any one of the constables or peace officers to enter during the day time into the dwelling houses of five persons mentioned by name "or any other house at Little Glace Bay if there is any suspicion that said goods and wares be in such house." It was held that this warrant was a general one and was void and that it afforded no justification to the officer acting under it." McLeod v. Campbell (1894), 26 N. S. R. 458.

Held, than the warrant above referred to was bad, since it delegated to an officer the duties of the justice, by enabling him to act on suspicions arising in his mind after the issue of the warrant. McLeod v. Campbell, supra.

In an English case it was held that the goods for which search is to be made under the warrant need not be stated in detail and with particularity in the warrant or in the information therefor. Jones v. German (1896), 2 Q. B., 418.

A search warrant issued under this section is a judicial proceeding and may be removed by certiorari.

It is essential that an information for a search warrant should set forth the "causes of suspicion" in order to satisfy the justice that there is reasonable ground for believing that the articles to be searched for are associated with the crime charged. If the information for a search warrant does not pledge the informant's oath to such belief and state the cause of his suspicion, it is insufficient, and a search warrant granted upon it is bad and should be quashed. R. v. Kehr (1906), 11 C. C. C., 52.

630. Execution of search warrant.—Every search warrant shall be executed by day, unless the justice shall by the warrant authorize the constable or other person to execute it at night.

2. **Form.**—Every search warrant may be in form 2, or to the like effect. 55-56 V., c. 29, s. 569.

631. Detention of things seized.—When any such thing is seized and brought before a justice, he may detain it, taking reasonable care to preserve it till the conclusion of the investigation; and, if any one is committed for trial, he may order it further to be detained for the purpose of evidence on the trial.

2. **Restoration.**—If no one is committed, the justice shall direct such thing to be restored to the person from whom it was taken, except in the cases next hereinafter mentioned, unless he is authorized or required by law to dispose of it otherwise. 55-56 V., c. 29, s. 569.

632. Forged bank note, etc., found may be destroyed.—If under any such warrant there is brought before any justice any forged bank note, bank note-paper, instrument or other thing, the possession whereof in the absence of lawful excuse is an offence under any provision of this or any other Act, the court to which any such person is committed for trial or, if there is no commitment for trial, such justice may cause such thing to be defaced or destroyed.

2. **Counterfeit coin to be defaced.**—If under any such warrant there is brought before any justice, any counterfeit coin or other thing the possession of which with knowledge of its nature and without lawful excuse is an indictable offence under any provision of Part IX., every such thing so soon as it has been produced in evidence, or so soon as it appears that it will not be required to be so produced, shall forthwith be defaced or otherwise disposed of as the justice or the court directs. 55-56 V., c. 29, s. 569.

633. Seizure of explosives.—Every person acting in the execution of any such warrant may seize any explosive substance which he has good cause to suspect is intended to be used for any unlawful object, and shall, with all convenient speed, after the seizure, remove the same to such proper place as he thinks fit, and detain the same until ordered by a judge of a superior court to restore it to the person who claims the same.

2. **Forfeiture.**—Any explosive substance so seized shall, in the event of the person in whose possession the same is found, or of the owner thereof, being convicted of any offence under any provision of Part II., relating to explosive substances, be forfeited; and the same shall be destroyed or sold under the direction of the court before which such person is convicted.

3. **Application of proceeds.**—In the case of sale, the proceeds arising therefrom shall be paid to the Minister of Finance, for the public uses of Canada. 55-56 V., c. 29, s. 569.

634. Offensive weapons seized.—If offensive weapons believed to be dangerous to the public peace are seized under a search warrant the same shall be kept in safe custody in such place as the justice directs, unless the owner thereof proves, to the satisfaction of such justice, that such offensive weapons were not kept for any purpose dangerous to the public peace.

2. **Restoration or safe custody.**—Any person from whom any such offensive weapons are so taken may, if the justice upon whose warrant the same are taken, upon application made for that purpose, refuses to restore the same, apply to a judge of a

superior or county court for the restitution of such offensive weapons, upon giving ten days' previous notice of such application to such justice; and such judge shall make such order for the restitution or safe custody of such offensive weapons as upon such application appears to him to be proper. 55-56 V., c. 29, s. 569.

635. Suspected goods, instruments or things seized.—If goods or things by means of which it is suspected that an offence has been committed against any provision of Part VII. relating to forgery of trade marks and fraudulent marking of merchandise, are seized under a search warrant, and brought before a justice, such justice and one or more other justice or justices shall determine summarily whether the same are or are not forfeited under the said Part.

2. **When owner cannot be found.**—If the owner of any goods or things which, if the owner thereof had been convicted, would be forfeited under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and the said justice may cause notice to be advertised stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be declared forfeited.

3. **Forfeiture.**—At such time and place the justice, unless the owner, or some person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may declare such goods or things, or any of them, forfeited. 55-56 V., c. 29, s. 569.

636. Search for public stores by peace officer deputed.—Any constable or other peace officer, if deputed by any public department, may, within the limits for which he is such constable or peace officer, stop, detain and search any person reasonably suspected of having or conveying in any manner any public stores, stolen or unlawfully obtained, or any vessel, boat or vehicle in or on which there is reason to suspect that any public stores stolen or unlawfully obtained may be found.

2. **When deemed deputed.**—A constable or other peace officer shall be deemed to be deputed within the meaning of this section if he is deputed by any writing signed by the person who is the head of such department, or who is authorized to sign documents on behalf of such department. 55-56 V., c. 29, s. 570.

637. Search warrant for gold, silver, ore or quartz.—On complaint in writing made to any justice of the county, dis-

trict or place, by any person interested in any mining claim, that mined gold or gold-bearing quartz, or mined or unmanufactured silver or silver ore, is unlawfully deposited in any place, or held by any person contrary to law, a general search warrant may be issued by such justice, as in the case of stolen goods, including any number of places or persons named in such complaint.

2. **Restoration.**—If, upon search, any such gold or gold-bearing quartz or silver or silver ore is found to be unlawfully deposited or held, the justice shall make such order for the restoration thereof to the lawful owner as he considers right.

3. **Appeal.**—The decision of the justice in such case is subject to appeal as in ordinary cases coming within the provisions of Part XV. 55-56 V., c. 29, s. 571.

As to the procedure and regulations applicable to an appeal, see section 1124.

638. Search for timber, etc., unlawfully detained.—If any constable or other peace officer has reasonable cause to suspect that any timber, mast, spar, saw-log or other description of lumber, belonging to any lumberman or owner of lumber, and bearing the registered trade mark of such lumberman or owner of lumber, is kept or detained in any saw-mill, mill-yard, boom or raft, without the knowledge or consent of the owner, such constable or other peace officer may enter into or upon such saw-mill, mill-yard, boom or raft, and search or examine for the purpose of ascertaining whether such timber, mast, spar, saw-log or other description of lumber is detained therein without such knowledge or consent. 55-56 V., c. 29, s. 572.

639. Search for liquor near His Majesty's vessels.—Any officer in His Majesty's service, any warrant or petty officer of the navy, or any non-commissioned officer of marines, with or without seamen or persons under his command, may search any boat or vessel which hovers about or approaches, or which has hovered about or approached, any of His Majesty's ships or vessels mentioned in section one hundred and forty-one, and may seize any intoxicating liquor found on board such boat or vessel; and the liquor so found shall be forfeited to the Crown. 55-56 V., c. 29, s. 573.

640. Search for women in house of ill-fame.—Warrant.—Whenever there is reason to believe that any woman or girl mentioned in section two hundred and sixteen of this Act, has been inveigled or enticed to a house of ill-fame or assignation, then upon complaint thereof being made under oath by the

parent, husband, master or guardian of such woman or girl, or in the event of such woman or girl having no known parent, husband, master or guardian in the place in which the offence is alleged to have been committed, by any other person, to any justice, or to a judge of any court authorized to issue warrants in cases of alleged offences against the criminal law, such justice or judge may issue a warrant to enter, by day or night, such house of ill-fame or assignation, and if necessary use force for the purpose of effecting such entry whether by breaking open doors or otherwise, and to search for such woman or girl, and bring her and the person or persons in whose keeping and possession she is, before such justice or judge, who may, on examination, order her to be delivered to her parent, husband, master or guardian, or to be discharged, as law and justice require. 55-56 V., c. 29, s. 574.

641. Searching in gaming house.—Order for search in writing.—If the chief constable or deputy chief constable of any city, town, incorporated village or other municipality or district, organized or unorganized, or place, or other officer authorized to act in his absence, reports in writing to any of the commissioners of police or to the mayor or chief magistrate or to the police, stipendiary or district magistrate of such city, town, incorporated village or other municipality, district or place, or to any police, stipendiary or district magistrate having jurisdiction there, or if there be no such mayor, or chief magistrate, or police, stipendiary or district magistrate, to any justice having such jurisdiction, that there are good grounds for believing, and that he does believe that any house, room or place within the said city or town, incorporated village or other municipality, district or place, is kept or used as a common gaming or betting house, as defined in sections two hundred and twenty-six and two hundred and twenty-seven, or is used for the purpose of carrying on a lottery, or for the sale of lottery tickets, or for the purpose of conducting or carrying on any scheme, contrivance or operation for the purpose of determining the winners in any lottery contrary to the provisions of section two hundred and thirty-six, whether admission thereto is limited to those possessed of entrance keys or otherwise, such commissioner mayor, chief magistrate, police, stipendiary or district magistrate or justice may, by order in writing authorize the chief constable, deputy chief constable, or other officer as aforesaid, to enter any such house, room or place, with such constables as are deemed requisite by him, and if necessary to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into

custody all persons who are found therein, and to seize, as the case may be, all tables and instruments of gaming or betting, and all moneys and securities for money, and all instruments or devices for the carrying on of such lottery, or of such scheme, contrivance or operation, and all lottery tickets, found in such house or premises, and to bring the same before the person issuing such order or any justice, to be by him dealt with according to law.

2. **Search and seizure.**—The chief constable, deputy chief constable or other officer making such entry, in obedience to any such order, may, with the assistance of one or more constables, search all parts of the house, room or place which he has so entered, where he suspects that tables or instruments of gaming or betting, or any instruments or devices for the carrying on of such lottery or of such scheme, contrivance or operation, or any lottery tickets, are concealed, and all persons whom he finds in such house or premises, and seize all tables and instruments of gaming or betting, or any such instruments or devices or lottery tickets as aforesaid, which he so finds.

3. **Destruction of property seized.**—The person issuing such order or the justice before whom any person is taken by virtue of an order under this section, may direct any cards, dice, balls, counters, tables or other instruments of gaming or used in playing any game, or of betting, or any such instruments or devices for the carrying on of a lottery, or for the conducting or carrying on of any such scheme, contrivance or operation, or any such lottery tickets, so seized as aforesaid, to be forthwith destroyed, and any money or securities so seized shall be forfeited to the Crown for the public uses of Canada. 58-59 V., c. 40, s. 1.

A high constable, having a commission as such from the Crown and not exercising a delegated authority, can legally appoint a deputy to act during his temporary absence. The acts of a de facto officer are, as regards all persons but the holder of the legal title, legal and binding. O'Neil v. Attorney General of Canada (1896), 1 C. C. C., 303.

See also R. v. Bedford Level (1805), 6 East 356.

A statutory provision by the Parliament of Canada purporting to authorize a magistrate to adjudge forfeiture to the Crown of moneys, etc., found in a common gaming house, and declaring the keeping of a gaming house a criminal offence, and imposing punishment therefor, is not *ultra vires*, and the judgment of confiscation is not an interference with "property and civil rights," the jurisdiction in regard to which belongs to the provinces, although the party claiming the money was not a party to the proceedings in which the confiscation was decreed. O'Neil v. Attorney General of Canada, supra.

642. Magistrate may require any person apprehended

to be examined on oath.—Punishment of persons refusing to give evidence.—The person issuing such order or the justice before whom any person who has been found in any house, room or place, entered in pursuance of any order under the last preceding section, is taken by virtue of such order may require any such person to be examined on oath and to give evidence touching any unlawful gaming in such house, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room or place, or any part thereof, of any constable or officer authorized to make such entry; and any such person so required to be examined as a witness who refuses to make oath accordingly, or to answer any question, shall be subject to be dealt with in all respects as any person appearing as a witness before any justice or court in obedience to a summons or subpœna and refusing without lawful cause or excuse to be sworn or to give evidence, may, by law, be dealt with.

2. **Persons making a full discovery to be free from all penalties, on certificate.**—Every person so required to be examined as a witness, who, upon such examination, makes true disclosure, to the best of his knowledge, of all things as to which he is examined shall receive from the judge, justice, magistrate, examiner or other judicial officer before whom such proceeding is had, a certificate in writing to that effect, and shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures and punishments to which he has become liable for anything done before that time in respect of any act of gaming regarding which he has been so examined, if such certificate states that such witness made a true disclosure in respect to all things as to which he was examined; and any action, indictment or proceedings pending or brought in any court against such witness in respect of any act of gaming regarding which he was so examined, shall be stayed, upon the production and proof of such certificate, and upon summary application to the court in which such action, indictment or proceeding is pending, or any judge thereof, or any judge of any of the superior courts of any province. R.S., c. 158, ss. 9 and 10.

643. Search warrant for vagrant concealed.—Any stipendiary or police magistrate, mayor or warden, or any two justices, upon information before them made, that any person described in Part V. as a loose, idle or disorderly person, or vagrant, is or is reasonably suspected to be harboured or concealed in any disorderly house, bawdy-house, house of ill-fame,

tavern or boarding-house, may, by warrant, authorize any constable or other person to enter at any time such house or tavern, and to apprehend and bring before them or any other justices, every person found therein so suspected as aforesaid. 55-56 V., c. 29, s. 576.

TRIALS UNDER SPECIAL PROVISIONS.

644. Trial of juveniles.—The trials of young persons apparently under the age of sixteen years, shall take place without publicity and separately and apart from the trials of other accused persons, and at suitable times to be designated and appointed for that purpose. 57-58 V., c. 58, s. 1.

645. Trials may be held in private in certain cases.—At the trial of any person charged with an offence under any of the following sections, that is to say:—Two hundred and two, two hundred and three, two hundred and four, two hundred and five, two hundred and six, two hundred and eleven, two hundred and twelve, two hundred and thirteen, two hundred and fourteen, two hundred and fifteen, two hundred and sixteen, two hundred and seventeen, two hundred and eighteen, two hundred and nineteen, two hundred and twenty, two hundred and twenty-eight in so far as it relates to common bawdy-houses, two hundred and thirty-nine in so far as it relates to paragraphs (i), (j) or (k) of section two hundred and thirty-eight, two hundred and ninety-two, two hundred and ninety-three, two hundred and ninety-nine, three hundred, three hundred and one, three hundred and two, three hundred and three, three hundred and four, three hundred and five, three hundred and six, three hundred and thirteen and three hundred and fourteen, or with conspiracy or attempt to commit, or being an accessory after the fact to any such offence, the court or judge or justice may order that the public be excluded from the room or place in which the court is held during such trial.

2. **Orders for exclusion of public.**—Such order may be made in any other case also in which the court or judge or justice may be of opinion that the same will be in the interests of public morals.

3. **Saving.**—Nothing in this section shall be construed by implication or otherwise as limiting any power heretofore possessed at common law by the presiding judge or other presiding officer of any court of excluding the general public from the court-room in any case when such judge or officer deems such exclusion necessary or expedient. 63-64 V., c. 46, s. 3.

PART XIII.

COMPELLING APPEARANCE OF ACCUSED BEFORE JUSTICES.

ARREST WITHOUT WARRANT.

646. By any person in certain cases—Any person may arrest without warrant any one who is found committing any of the offences mentioned in sections,—

(a) seventy-four, treason; seventy-six, accessories after the fact to treason; seventy-seven, seventy-eight and seventy-nine, treasonable offences; eighty, assaults on the King; eighty-one, inciting to mutiny;

(b) ninety-two, offences respecting the reading of the Riot Act; ninety-six, riotous destruction of property; ninety-seven, riotous damage to property;

(c) one hundred and twenty-nine, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and thirty, administering, taking or procuring the taking of other unlawful oaths;

(d) one hundred and thirty-seven, piracy; one hundred and thirty-eight, piratical acts; one hundred and thirty-nine, piracy with violence;

(e) one hundred and eighty-five, being at large while under sentence of imprisonment; one hundred and eighty-seven, breaking prison; one hundred and eighty-nine, escape from custody or from prison; one hundred and ninety, escape from lawful custody;

(f) two hundred and two, unnatural offence;

(g) two hundred and sixty-three, murder; two hundred and sixty-four, attempt to murder; two hundred and sixty-seven, being accessory after the fact to murder; two hundred and sixty-eight, manslaughter; two hundred and seventy, attempt to commit suicide;

(h) two hundred and seventy-three, wounding with intent to do bodily harm; two hundred and seventy-four, wounding; two hundred and seventy-six, stupefying in order to commit an indictable offence; two hundred and seventy-nine and two hundred and eighty, injuring or attempting to injure by explosive substances; two hundred and eighty-two, intentionally endangering persons on railways; two hundred and eighty-three, wantonly endangering persons on railways; two hundred and eighty-six, preventing escape from wreck;

(i) two hundred and ninety-nine, rape; three hundred, at-

tempt to commit rape; three hundred and one, defiling children under fourteen;

(j) three hundred and thirteen, abduction of a woman;

(k) three hundred and fifty-eight, theft by agents and others; three hundred and fifty-nine, theft by clerks, servants and others; three hundred and sixty, theft by tenants and lodgers; three hundred and sixty-one, theft of testamentary instruments; three hundred and sixty-two, theft of documents of title; three hundred and sixty-three, theft of judicial or official documents; three hundred and sixty-four, three hundred and sixty-five and three hundred and sixty-six, theft of postal matter; three hundred and sixty-seven, theft of election documents; three hundred and sixty-eight, theft of railway tickets; three hundred and sixty-nine, theft of cattle; three hundred and seventy-one, theft of oysters; three hundred and seventy-two, theft of things fixed to buildings or land; three hundred and seventy-nine, stealing from the person; three hundred and eighty, stealing in dwelling-houses; three hundred and eighty-one, stealing by picklocks, etc.; three hundred and eighty-two, stealing from ships, docks, wharfs or quays; three hundred and eighty-three, stealing wreck; three hundred and eighty-four, stealing on railways; three hundred and eighty-eight, stealing in manufactories; three hundred and ninety-one, public servant refusing to deliver up chattels, money valuables, security, books, papers, accounts or documents; three hundred and ninety-eight, bringing stolen property into Canada;

(l) three hundred and ninety-nine, receiving property obtained by crime;

(m) four hundred and ten, personation of certain persons;

(n) four hundred and forty-six, aggravated robbery; four hundred and forty-seven, robbery; four hundred and forty-eight, assault with intent to rob; four hundred and forty-nine, stopping the mail; four hundred and fifty, compelling execution of documents by force; four hundred and fifty-one, sending letter demanding with menaces; four hundred and fifty-two, demanding with intent to steal; four hundred and fifty-three, extortion by certain threats;

(o) four hundred and fifty-five, breaking place of worship and committing an indictable offence; four hundred and fifty-six, breaking place of worship with intent to commit an indictable offence; four hundred and fifty-seven, burglary; four hundred and fifty-eight, housebreaking and committing an indictable offence; four hundred and fifty-nine, housebreaking with intent to commit an indictable offence; four hundred and sixty, breaking shop and committing an indictable offence; four hundred and

sixty-one, breaking shop with intent to commit an indictable offence; four hundred and sixty-two, being found in a dwelling-house by night; four hundred and sixty-three, being armed, with intent to break a dwelling-house; four hundred and sixty-four, being disguised or in possession of housebreaking instruments;

(p) four hundred and sixty-eight, four hundred and sixty-nine and four hundred and seventy, forgery; four hundred and sixty-seven, uttering forged documents; four hundred and seventy-two, counterfeiting seals; four hundred and seventy-eight, using probate obtained by forgery or perjury; five hundred and fifty, possessing forged bank notes;

(q) four hundred and seventy-one, making, having or using instrument for forgery or having or uttering forged bond or undertaking; four hundred and seventy-nine, counterfeiting stamps; four hundred and eighty, injuring or falsifying registers;

(r) one hundred and twelve, attempt to damage by explosives; five hundred and ten, mischief; five hundred and eleven, arson; five hundred and twelve, attempt to commit arson; five hundred and thirteen, setting fire to crops; five hundred and fourteen, attempting to set fire to crops; five hundred and seventeen, mischief on railways; five hundred and twenty, mischief to mines; five hundred and twenty-one, injuries to electric telegraphs, magnetic telegraphs, electric lights, telephones and fire alarms; five hundred and twenty-two, wrecking; five hundred and twenty-three, attempting to wreck; five hundred and twenty-six, interfering with marine signals;

(s) five hundred and fifty-two, counterfeiting gold and silver coin; five hundred and fifty-six, making instruments for coining; five hundred and fifty-eight, clipping current coin; five hundred and sixty, possessing clippings of current coin; five hundred and sixty-two, counterfeiting copper coin; five hundred and sixty-three, counterfeiting foreign gold and silver coin; five hundred and sixty-seven, uttering copper coin not current. 55-56 V., c. 29, s. 552; 58-59 V., c. 40, s. 1.

"Found committing" means either seeing a person actually committing the offence, or pursuing him immediately or continuously after he has been seen committing it. R. v. Curran (1828), 3 C. & P., 397; Downing v. Capel (1867), L. R., 2 C. P., 461.

647. By peace officer in the above and other cases.—A peace officer may arrest, without warrant, any one who has committed any of the offences mentioned in the sections in the last preceding section mentioned or in sections, —

(a) four hundred and five, obtaining by false pretense; four

hundred and six, obtaining execution of valuable securities by false pretense;

(b) five hundred and twenty-five, injuring dams, etc., or blocking timber channel; five hundred and thirty-six, attempting to injure or poison cattle;

(c) five hundred and forty-two, cruelty to animals; five hundred and forty-three, keeping cock-pit;

(d) five hundred and fifty-five, exporting counterfeit coin; five hundred and sixty-one, possessing counterfeit current coin; five hundred and sixty-three, paragraph (b), bringing into Canada or possessing counterfeit foreign gold or silver coin; five hundred and sixty-three, paragraph (d), counterfeiting foreign copper coin. 55-56 V., c. 29, s. 552; 58-59 V., c. 40, s. 1.

The arrest of a person, charged with obtaining goods by false pretences with intent to defraud, on a request by telegram from another province of Canada, where the offence is alleged to have been committed, may be justified by a peace officer by alleging either that the prisoner has actually committed such offence or that such officer, on reasonable and probable grounds, believes that the prisoner has committed the offence charged. R. v. Cloutier (1898), 2 C. C. C., 43.

648. By peace officer.—A peace officer may arrest, without warrant, any one whom he finds committing any criminal offence.

2. **By any person by night.**—Any person may arrest, without warrant, any one whom he finds committing any criminal offence by night. 58-59 V., c. 40, s. 1.

649. By any person on fresh pursuit.—Any one may arrest without warrant a person whom he, on reasonable and probable grounds, believes to have committed a criminal offence and to be escaping from, and to be freshly pursued by, those whom the person arresting, on reasonable and probable grounds, believes to have lawful authority to arrest such person. 55-56 V., c. 29, s. 552.

650. By owner of property.—The owner of any property on or with respect to which any person is found committing any criminal offence, or any person authorized by such owner, may arrest without warrant, the person so found, who shall forthwith be taken before a justice to be dealt with according to law. 58-59 V., c. 40, s. 1.

651. By officer in His Majesty's service.—Any officer in His Majesty's service, any warrant or petty officer in the navy,

and any non-commissioned officer of marines may arrest without warrant any person found committing any of the offences mentioned in section one hundred and forty-one. 55-56 V., c. 29, s. 552.

652. By peace officer.—Any peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard or other place during the night, and whom he has good cause to suspect of having committed or being about to commit, any indictable offence, and may detain such person until he can be brought before a justice to be dealt with according to law.

2. **When to be brought before justice.**—No person who has been so apprehended shall be detained after noon of the following day without being brought before a justice. 55-56 V., c. 29, s. 552.

Sub-section 2 applies only to this section. R. v. Cloutier (1898), 2 C. C. C., 43.

PROCEDURE—SUMMONS OR WARRANT.

653. Summons or warrant by justice in what cases.—Every justice may issue a warrant or summons as hereinafter mentioned to compel the attendance of an accused person before him, for the purpose of preliminary inquiry in any of the following cases:—

(a) If such person is accused of having committed in any place whatever an indictable offence triable in the province in which such justice resides, and is, or is suspected to be, within the limits over which such justice has jurisdiction, or resides or is suspected to reside within such limits;

(b) If such person, wherever he may be, is accused of having committed an indictable offence within such limits;

(c) If such person is alleged to have anywhere unlawfully received property which was unlawfully obtained within such limits;

(d) If such person has in his possession, within such limits, any stolen property. 55-56 V., c. 29, s. 554.

If there was a complaint proved and the person informed against was present, the magistrate might rightly proceed, though such person did not appear on summons, or did not require compulsion to make him appear. His actual presence is all that is required; the manner of his getting there is of no consequence to the investigation. R. v. Mason (1869), 29 U. C. Q. B., 431.

See also Ex parte Campbell (1887), 26 N. B. R., 590; R. v. Burke (1900), 5 C. C. C., 29.

654. Information or complaint.—Any one who, upon reasonable or probable grounds, believes that any person has committed an indictable offence under this Act may make a complaint or lay an information in writing and under oath before any magistrate or justice having jurisdiction to issue a warrant or summons against such accused person in respect of such offence.

2. **Form.**—Such complaint or information may be in form 3, or to the like effect. 55-56 V., c. 29, s. 558.

As offences generally affect some private individual in particular, the person so injured or affected usually commences the proceedings for bringing the offender to justice, although anyone who has reasonable or probable ground for believing that any person has been guilty of a crime may take proceedings and put the law in motion against him. R. v. St. Louis (1897), 1 C. C. C., 144.

A summons may be issued upon an information before a justice of the Peace for an offence punishable on summary conviction, although the information has not been sworn; but before a warrant can be issued to compel the attendance of the accused, there must be an information in writing and under oath. R. v. McDonald (1896), 3 C. C. C., 287.

If a mere summons is required no writing or oath is necessary. A bare verbal information is sufficient. If a warrant is required, then, and for that purpose only, an oath substantiating the information is required, not only by the provisions in Jervis' Act, so often referred to, but by the common law of which it was always a doctrine that a warrant which deprives a man of liberty ought not to issue without truth of the information. R. v. Hughes (1879), L. R., 4 Q. B. D., 415.

The fact that an information was not sworn at such time and place as specified therein, is not such a defect that, after the accused has appeared to the summons issued thereon, and has pleaded to the charge, the proceedings thereunder will be quashed on certiorari. Ex parte Sonier (1896), 2 C. C. C., 121; Ex parte Orr (1880), 20 N. B. R., 67; R. v. McMillan (1873), 15 N. B. R., 111.

The warrant of a magistrate is only *prima facie* evidence of the fact recited therein after an information on oath and in writing has been laid. Friel v. Ferguson (1865), 15 U. C. C. P., 584.

An information may be amended, but if on oath it must be re-sworn. Re Conklin (1871), 31 U. C. Q. B., 160.

A conviction will not be quashed on certiorari because it does not describe an offence against the law, if the court upon perusal of the depositions is of the opinion that an offence of the nature described in the conviction has been committed. R. v. Crandale (1896), 27 O. R., 63.

A justice of the peace, unless he is himself personally arresting an offender or is assisting in so doing, can only legally direct his arrest by a warrant issued upon a written complaint or information. McGuiness v. Dafoe (1896), 3 C. C. C., 139; Sinden v. Brown (1889), 17 Ont. A. R., 173; R. v. Bolton (1841), 1 Q. B., 66; R. v. Millard (1853), 22 L. J. M. C., 108.

Any one who lays an information in writing and under oath before a magistrate against any person, obviously "accuses" that person of the offence charged against him in such information. R. v. Kempel (1900), 3 C. C. C., 481 at p. 484.

See also R. v. Robinson (1837), 2 M. & Rob., 14; R. v. Tomlinson (1895), 1 Q. B. at p. 710.

An information should give a concise and legal description of the of-

fence charged, and should contain the same certainty as an indictment, and the description of the charge must include every ingredient required by the statute to constitute the offence. The statement of the offence may be in the words of the enactment describing it or declaring the transactions charged to be an indictable offence. R. v. France (1898), 1 C. C. C., 321.

In order that there may be probable cause for an arrest it is necessary that the fact invoked by the prosecutor be such as if true would justify a criminal prosecution. If this is lacking, good faith or absence of malice is no excuse. Gowan v. Holland (1896), R. J. Q., 11 S. C., 75.

A person who in good faith lays an information for an offence unknown to the law before a magistrate, who thereupon, without jurisdiction, convicts and commits the accused to jail, is not liable to an action for malicious prosecution so long as he had probable cause, as he has not acted maliciously. Grimes v. Miller (1896), 23 O. A. R., 764.

Malice alone will not justify the granting of damages in an action for malicious prosecution; there must always be a want of probable cause. Lemire v. Duclos (1898), R. J. Q., 13 S. C., 82.

But the fact that a prosecution was instituted upon the advice of counsel is not sufficient to protect the prosecutor, if he did not exercise reasonable care and diligence in order to ascertain and lay before counsel the facts in reference to the alleged offence. But there must also be malice as well as want of reasonable and probable cause, and the question whether or not there was malice is one for the jury. St. Denis v. Snoultz (1897), 25 Ont. A. R., 131.

The fact that counsel's opinion has been taken tends to shew that the prosecutor was not acting with malice. Seary v. Saxton (1896), 28 N. S. R., 278.

If a solicitor upon whose advice the prosecution in question was taken, has been joined as a defendant in the action for malicious prosecution, his case should be allowed to go to the jury with that of his co-defendant, if it is shown that he had an equal knowledge of the facts of the case before giving the advice upon which the action complained of was taken. Seavy v. Saxton, supra.

A person may believe in a charge he makes and yet be acting maliciously in making it.

And the fact that the trial judge, although not requested to do so, omitted to instruct the jury upon that point, was held to be a sufficient reason for setting the verdict aside. Hawkins v. Snow (1896), 28 N. S. R., 259.

See also as to sufficient grounds for an action for malicious prosecution, Lavigne v. Lefebvre (1898), R. J. Q., 14 S. C., 275; Lalande v. Campeau (1899), 5 Revue de Jurisprudence, 438.

An information stating that the deponent has just cause to suspect and believe, and does suspect and believe, that the accused committed the offence, but stating no grounds of suspicion, does not justify the issue of a warrant, unless supplemented by the examination upon oath of the informant, or of his witnesses, to prove the causes of suspicion. R. v. Lizotte (1905), 10 C. C. C., 316.

A magistrate has no jurisdiction to issue a warrant of arrest in the first instance in proceedings under the summary convictions clauses of the Code upon an information pledging the informant's suspicions and belief, but not stating the grounds therefor, without first examining the informant or his witnesses as to the grounds of suspicion. Ex parte Grundy (1906), 12 C. C. C., 65.

655. Summons or warrant thereon.—Upon receiving any

such complaint or information the justice shall hear and consider the allegations of the complainant, and if of opinion that a case for so doing is made out, he shall issue a summons, or warrant, as the case may be, in manner hereinafter provided.

2. **Process compulsory.**—Such justice shall not refuse to issue such summons or warrant only because the alleged offence is one for which an offender may be arrested without warrant. 55-56 V., c. 29, s. 559.

The combined effect of secs. 655 and 711 of the Code is that it is discretionary with the magistrate to issue either a summons or a warrant as he may deem fit. R. v. McGregor (1895), 2 C. C. C. at p. 413.

A magistrate is not under a legal obligation to issue a warrant of arrest upon an information in respect of an indictable offence, if on consideration of the complainant's allegations he is of opinion that a case for so doing is not made out. That a magistrate did not properly appreciate the evidence submitted upon an application for the issue of a warrant of arrest for an indictable offence is not a ground for a mandamus to compel him to grant a warrant against his opinion, formed in good faith. Thompson v. Desnoyers (1899), 3 C. C. C., 69 (Quebec).

An Ontario decision to the same effect is Re Parke (1899), 3 C. C. C., 122.

See also Ex parte Lewis (1888), L. R., 21 Q. B. D., 191.

An information under oath which on its face purports to be the information of a person other than the person who has signed and sworn to the same is had.

Where a warrant of arrest based upon such defective information has been issued to enforce the attendance of the accused before a magistrate, and the magistrate at the opening of the trial amends the information by inserting therein, in the presence of and with the consent of the person who had signed and sworn to the information, the latter's name in the place of the name so appearing on the face of the information, it is necessary that the information should be re-sworn.

Where the defendant has been arrested under the warrant and when brought before the magistrate takes objection to the amended information upon the ground, that it should be re-sworn after the amendment, and has the objection noted, he does not waive the objection by proceeding with the trial and cross-examining witnesses. R. v. McNutt (1896), 3 C. C. C., 184.

See also Dixon v. Wells (1890), L. R., 25 Q. B. D., 249; Blake v. Beech, 1 Ex. D., 320.

The issue of a summons, whether in relation to an offence punishable summarily or to an indictable offence, is a judicial act. R. v. Ettinger (1899), 3 C. C. C., 387.

Depositions taken *ex parte* by the magistrate on the application to him for process against the accused cannot be afterwards used as evidence on the preliminary enquiry and do not form a part of the record of proceedings against the accused. Weir v. Choquet (1900), 6 Revue de Jurisprudence, 121.

A justice acting for a police magistrate in his illness or absence or at his request should be designated as so acting in warrants or other process, and a warrant signed by a justice of the peace so acting, in which he is described as "police magistrate", is void. R. v. Lyons (1892), 2 C. C. C., 218.

The initials "J. P." following the signature of the person presuming

to issue a warrant is not a sufficient description of such person as a justice of the peace for the city or county in which the warrant purports to have been issued. R. v. Lyons, supra.

See also Grenier v. Ahern (1894), 1 Rev. de Jurisp., 362.

A justice of the peace who issues a warrant of arrest without inquiring into the grounds which the complainant had to suspect the accused, becomes liable towards the latter under the laws of Quebec, when the complaint was not justified by any serious, reasonable or plausible ground. Murfina v. Sauve (1901), 6 C. C. C., 275.

Upon taking an information the magistrate is not bound to issue a summons or warrant upon the same day, notwithstanding the words "this day" in the statutory forms (5 and 6), but may take time to consider whether a case is made out for so doing. R. v. Hudgins (1907), 12 C. C. C., 223.

656. Warrant in cases of offence committed on the seas, etc.—Form.—Whenever any indictable offence is committed on the high seas, or in any creek, harbour, haven or other place in which the Admiralty of England have or claim to have jurisdiction, and whenever any offence is committed on land beyond the seas for which an indictment may be preferred or the offender may be arrested in Canada, any justice for any territorial division in which any person charged with, or suspected of having committed any such offence is, or is suspected to be, may issue his warrant, in form 4, or to the like effect, to apprehend such person to be dealt with as herein and hereby directed. 55-56 V., c. 29, s. 560.

657. Arrest of suspected deserter.—Every one who is reasonably suspected of being a deserter from His Majesty's service may be apprehended and brought for examination before any justice, and if it appears that he is a deserter he shall be confined in gaol until claimed by the military or naval authorities or proceeded against according to law.

2. **Breaking open buildings, not without warrant.**—No one shall break open any building to search for a deserter unless he has obtained a warrant for that purpose from a justice, founded on affidavit that there is reason to believe that the deserter is concealed in such building, and that admittance has been demanded and refused.

3. **Resisting warrant.**—Every one who resists the execution of any such warrant shall incur a penalty of eighty dollars, recoverable on summary conviction, before two justices. 55-56 V., c. 29, s. 561.

658. Summons.—Every summons issued by a justice under this Act shall be directed to the accused, and shall require him to appear at a time and place to be therein mentioned.

2. **Form.**—Such summons may be in form 5, or to the like effect.

3. **In blank.**—No summons shall be signed in blank.

4. **Service.**—Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed, either by delivering it to him personally or, if such person cannot conveniently be met with, by leaving it for him at his last or most usual place of abode with some inmate thereof apparently not under sixteen years of age.

5. **Proof of Service.**—The service of any such summons may be proved by the oral testimony of the person effecting the same or by the affidavit of such person purporting to be made before a justice. 55-56 V., c. 29, s. 562.

The procedure of the Criminal Code of Canada as to summary convictions applies as well to corporations as to natural persons. The fact that a portion of the remedy provided for the recovery of the penalty and costs is personal imprisonment, does not prevent the application of the summary procedure in other respects to corporations.

Notice of a summons by justices under the Summary Convictions Clauses of the Code may be given in a manner similar to a notice of indictment under section 918. R. v. Toronto Rly. Co. (1898), 2 C. C. C., 471.

Service of a summons to appear before a magistrate to answer a charge of having committed an offence punishable by summary conviction is not validly made although left with the defendant's wife at his usual place of abode, if the defendant was then absent from Canada and remained away until after the hearing. Ex parte Donovan (1894), 3 C. C. C., 286.

The proof of service of a magistrate's summons served substitutionally must show that the defendant could not be conveniently served in person, and that the adult person substitutionally served for him at the defendant's place of abode is an inmate thereof.

Where proof of the substitutional service becomes necessary in order to enable the magistrate to proceed with the trial, and is defective in both of such particulars, the conviction will be quashed on certiorari.

Evidence will not be received in the certiorari proceedings to supplement the proof of service given before the magistrate. Re Barron (1897), 4 C. C. C., 465.

In a New Brunswick case it was held that a summons might be served in any parish within the jurisdiction of the magistrate issuing the same by a constable whose ordinary duties did not extend to that parish. Ex parte Doherty (1894), 32 N. B. R., 375.

A magistrate has no jurisdiction to proceed in the absence of the accused in a summary proceeding, without evidence that the summons was served a reasonable time before the hearing.

Where the proof of service of the summons was that it had been left with an adult person at defendant's house on the date preceding the hearing, such does not constitute evidence upon which the magistrate could adjudicate upon the question of reasonable notice, without proof of the hour of service and the distance from the place of hearing. Re O'Brien (1905), 10 C. C. C., 142.

See also R. v. Craig (1905), 10 C. C. C., 249.

659. Warrant for apprehension.—Form.—The warrant is-

sued by a justice for the apprehension of the person against whom an information or complaint has been laid as provided in section six hundred and fifty-four may be in form 6, or to the like effect.

2. **In blank.**—No such warrant shall be signed in blank. 55-56 V., c. 29, s. 563.

660. Formalities of warrant.—Every warrant shall be under the hand and seal of the justice issuing the same and may be directed, either to any constable by name, or to such constable and all other constables within the territorial jurisdiction of the justice issuing it, or generally to all constables within such jurisdiction.

2. **Statement of offence.**—The warrant shall state shortly the offence for which it is issued, and shall name or otherwise describe the offender, and it shall order the officer or officers to whom it is directed to apprehend the offender and bring him before the justice or justices issuing the warrant, or before some other justice or justices, to answer to the charge contained in the information or complaint, and to be further dealt with according to law.

2. **No return day.**—It shall not be necessary to make such warrant returnable at any particular time, but the same shall remain in force until it is executed.

4. **Summons not to prevent warrant.**—The fact that a summons has been issued shall not prevent any justice from issuing a warrant at any time before or after the time mentioned in the summons for the appearance of the accused.

5. **Warrant in default.—Form.**—In case the service of the summons has been proved and the accused does not appear, or when it appears that the summons cannot be served, a warrant in form 7 may issue. 55-56 V., c. 29, s. 563.

661. Where and how executed.—Every such warrant may be executed by arresting the accused wherever he is found in the territorial jurisdiction of the justice by whom it is issued, or, in the case of fresh pursuit, at any place in an adjoining territorial division within seven miles of the border of the first-mentioned division.

2. **By whom.**—Every such warrant may be executed by any constable named therein or by any one of the constables to whom it is directed, whether or not the place in which it is to be executed is within the place for which he is a constable.

3. **On holiday.**—Every warrant authorized by this Act may be issued and executed on a Sunday or statutory holiday. 55-56 V., c. 29, s. 564.

It would seem that a warrant of commitment following a summary conviction is not within sub-sec. 3; and an arrest on Sunday for default in payment of a fine under the Canada Temperance Act, was held void. Ex parte Frecker (1897), 33 C. L. J. 248.

662. Endorsement of warrant.—If the person against whom any warrant has been issued cannot be found within the jurisdiction of the justice by whom the same was issued, but is or is suspected to be in any other part of Canada, any justice within whose jurisdiction he is or is suspected to be, upon proof being made on oath or affirmation of the handwriting of the justice who issued the same, shall make an endorsement on the warrant, signed with his name, authorizing the execution thereof within his jurisdiction.

2. **Effect of.**—Such endorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables of the territorial division where the warrant has been so endorsed, to execute the same therein and to carry the person against whom the warrant issued when apprehended, before the justice who issued the warrant, or before some other justice for the same territorial division.

3. **Form.**—Such endorsement may be in form 8. 55-56 V., c. 29, s. 565.

In Ontario, a constable who executes a warrant in good faith outside the territorial district of the magistrate issuing the same, without procuring the endorsement of a magistrate of the county until the arrest is made, is entitled to notice of action, and to the protection afforded by R. S. O. (1887), cap. 73; and a notice of action which wrongly states the name of the township and the county in which the arrest took place is insufficient. Alderich v. Humphrey (1898), 29 O. R., 427.

663. Procedure on arrest under endorsed warrant.—If the prosecutor or any of the witnesses for the prosecution are in the territorial division where such person has been apprehended upon a warrant endorsed as provided in the last preceding section, the constable or other person or persons who have apprehended him, may, if so directed by the justice endorsing the warrant, take him before such justice, or before some other justice for the same territorial division; and the said justice may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect as if he had himself issued the warrant. 55-56 V., c. 29, s. 566.

A person summoned but not arrested for trespassing on a railway track, is not liable to be tried elsewhere than in the local jurisdiction wherein the offence was committed. R. v. Hughes (1895), 2 C. C. C., 332.

664. Procedure in other cases of person arrested on warrant.—When any person is arrested upon a warrant he shall, except in the case provided for in the last preceding section, be brought as soon as is practicable before the justice who issued it or some other justice for the same territorial division, and such justice shall either proceed with the inquiry or postpone it to a future time, in which latter case he shall either commit the accused person to proper custody or admit him to bail or permit him to be at large on his own recognizance according to the provisions hereinafter contained. 55-56 V., c. 29, s. 567.

665. Preliminary inquiry.—The preliminary inquiry may be held either by one justice or by more justices than one.

2. **Offence committed out of jurisdiction.—Proceedings.**—If the accused person is brought before any justice charged with an offence committed out of the limits of the jurisdiction of such justice, such justice may, after hearing both sides, order the accused at any stage of the inquiry to be taken by a constable before some justice having jurisdiction in the place where the offence was committed.

3. **Offender taken before justice where offence committed.**—The justice so ordering shall give a warrant for that purpose to a constable, which may be in form 9, or to the like effect, and shall deliver to such constable the information, depositions and recognizances, if any, taken under the provisions of this Act, to be delivered to the justice before whom the accused person is to be taken, and such depositions and recognizances shall be treated to all intents as if they had been taken by the last-mentioned justice. 55-56 V., c. 29, s. 557.

The power conferred on a magistrate of ordering the accused person brought before him, charged with an offence committed out of his territorial jurisdiction, to be taken before some justice having jurisdiction in the place where the offence was committed, is permissive only. R. v. Burke (1900), 5 C. C. C., 29.

666. Idem.—Form.—Upon the constable delivering to the justice the warrant, information, if any, depositions and recognizances, and proving on oath or affirmation, the handwriting of the justice who has subscribed the same, such justice, before whom the accused is produced, shall thereupon furnish such constable with a receipt or certificate in form 10, of his having received from him the body of the accused, together with the warrant, information, if any, depositions and recognizances, and of his having proved to him, upon oath or affirmation the handwriting of the justice who issued the warrant.

2. **Idem.**—If such justice does not commit the accused for trial, or hold him to bail, the recognizances taken before the first mentioned justice shall be void. 55-56 V., c. 29, s. 557.

667. Coroner's inquisition.—Warrant or recognizance.—Every coroner, upon any inquisition taken before him whereby any person is charged with manslaughter or murder, shall, if the person or persons, or either of them, affected by the verdict or finding is not already charged with the said offence before a magistrate or justice, by warrant under his hand, direct that such person be taken into custody and be conveyed, with all convenient speed, before a magistrate or justice; or such coroner may direct such person to enter into a recognizance before him, with or without a surety or sureties, to appear before a magistrate or justice.

2. **Transmitting depositions.**—In either case, it shall be the duty of the coroner to transmit to such magistrate or justice the depositions taken before him in the matter.

3. **Procedure.**—Upon any such person being brought or appearing before any such magistrate or justice, he shall proceed in all respects as though such person had been brought or had appeared before him upon a warrant or summons. 55-56 V., c. 29, s. 568.

Section 940 provides that no one shall be tried upon any coroner's inquisition. A coroner's court is a court of record and the coroner is a judge of a court of record.

A coroner has power to himself summon the coroner's jury by a mere verbal direction to the jurors. Davidson v. Garrett (1899), 5 C. C. C., 200.

A Coroner's Court is a criminal court and a court of record, and proceedings before the coroner are within the jurisdiction of the Federal Parliament, although no one is there charged with the offence of causing the death of the deceased. R. v. Hammond (1898), 1 C. C. C., 373.

A coroner is not a "justice" within the meaning of Cr. Code sec. 999 which provides for using upon a trial the depositions "taken by a justice in the preliminary or other investigation of any charge," of a witness absent from Canada. R. v. Graham (1898), 2 C. C. C., 388.

Re Kinsella (1909)

PART XIV.

PROCEDURE ON APPEARANCE OF ACCUSED BEFORE JUSTICE.

JURISDICTION.

668. Inquiry by justice.—When any person accused of an indictable offence is before a justice, whether voluntarily or upon summons, or after being apprehended with or without warrant, or while in custody for the same or any other offence, the justice shall proceed to inquire into the matters charged against such person in the manner hereinafter directed. 55-56 V., c. 29, s. 577.

It is not competent for magistrates where an information charges an offence under the Code, which they have no jurisdiction to try summarily, to convert the charge into one against a municipal by-law, which they have jurisdiction to try summarily, and to so try it on the original information. R. v. Dungey (1901), 5 C. C. C., 38.

See also R. v. France (1898), 1 C. C. C., 321; R. v. McRae (1897), 2 C. C. C., 49.

669. Irregularity or variance not to affect validity.—No irregularity or defect in the substance or form of the summons or warrant, and no variance between the charge contained in the summons or warrant and the charge contained in the information, or between either and the evidence adduced on the part of the prosecution at the inquiry, shall affect the validity of any proceeding at or subsequent to the hearing. 55-56 V., c. 29, s. 578.

The omission to state in a warrant of arrest that the information was taken under oath is merely an irregularity and would be cured by this section. Kingston v. Wallace (1886), 25 N. B. R., 573.

Where a warrant charges no offence known to the law, neither it nor a remand thereon is validated by this section. R. v. Holley (1893), 4 C. C. C., 510.

670. Adjournment in case of.—If it appears to the justice that the person charged has been deceived or misled by any such variance in any summons or warrant, he may adjourn the hearing of the case to some future day, and in the meantime may remand such person, or admit him to bail as hereinafter mentioned. 55-56 V., c. 29, s. 579.

PROCURING ATTENDANCE OF WITNESSES.

671. Summons for witness.—If it appears to the justice that any person being or residing within the province is likely to give material evidence either for the prosecution or for the accused on such inquiry he may issue a summons under his hand, requiring such person to appear before him at a time and place mentioned therein to give evidence respecting the charge, and to bring with him any documents in his possession or under his control relating thereto.

2. **Form.**—Such summons may be in form 11, or to the like effect. 55-56 V., c. 29, s. 580.

672. Service of summons for witness.—Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed either personally, or, if such person cannot conveniently be met with, by leaving it for him at his last or most usual place of abode with some inmate thereof apparently not under sixteen years of age. 55-56 V., c. 29, s. 581.

673. Warrant for witness after summons.—If any one to whom such last-mentioned summons is directed does not appear at the time and place appointed thereby, and no just excuse is offered for such non-appearance, then after proof upon oath that such summons has been served as aforesaid, or that the person to whom the summons is directed is keeping out of the way to avoid service, the justice before whom such person ought to have appeared, if satisfied by proof on oath that such person is likely to give material evidence, may issue a warrant under his hand to bring such person at a time and place to be therein mentioned before him or any other justice in order to testify as aforesaid.

2. **Form.**—The warrant may be in form 12, or to the like effect.

3. **Execution. Endorsement.**—Such warrant may be executed anywhere within the territorial jurisdiction of the justice by whom it is issued, or, if necessary endorsed as provided in section six hundred and sixty-two and executed anywhere in the province out of such jurisdiction. 55-56 V., c. 29, s. 582.

674. Procedure against defaulting witness.—If a person summoned as a witness under the provisions of this Part is brought before a justice on a warrant issued in consequence of refusal to obey the summons, such person may be detained on such warrant before the justice who issued the summons, or be-

fore any other justice in and for the same territorial division who shall then be there, or in the common gaol, or any other place of confinement, or in the custody of the person having him in charge, with a view to secure his presence as a witness on the day fixed for the trial, or, in the discretion of the justice, released on recognizance, with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer as for contempt for his default in not attending upon the said summons.

2. **Penalty for contempt.**—The justice may, in a summary manner, examine into and dispose of the charge of contempt against such person, who, if found guilty, shall be liable to a fine not exceeding twenty dollars, or to imprisonment in the common gaol, without hard labour, for a term not exceeding one month, or to both such fine and imprisonment, and may also be ordered to pay the costs incident to the service and execution of the said summons and warrant and of his detention in custody.

3. **Form of conviction.**—The conviction under this section may be in form 13. 55-56 V., c. 29, s. 582.

675. Warrant for witness in first instance.—If the justice is satisfied by evidence on oath that any person within the province, likely to give material evidence either for the prosecution or for the accused, will not attend to give evidence without being compelled so to do, then instead of issuing a summons, he may issue a warrant in the first instance.

2. **Form, etc.**—Such warrant may be in form 14, or to the like effect, and may be executed anywhere within the jurisdiction of such justice, or, if necessary, endorsed as provided in section six hundred and sixty-two and executed anywhere in the province out of such jurisdiction. 55-56 V., c. 29, s. 583.

A warrant against a witness is not wholly a civil process or subject to the limitations which attach to civil process, but is a substitute for an attachment. The constable executing it is justified, if the witness escapes after his arrest, in breaking into a dwelling house where he is and rearresting him if done in fresh pursuit. Messenger v. Parker (1885), 6 N. S. R., 237.

676. Witness beyond jurisdiction.—Subpoena.—If there is reason to believe that any person residing anywhere in Canada out of the province who is not within the province, is likely to give material evidence either for the prosecution or for the accused, any judge of a superior court or a county court, on application therefor by the informant or complainant, or the Attorney General, or by the accused person or his solicitor or some person authorized by the accused, may cause a writ of subpœna to be is-

sued under the seal of the court of which he is a judge, requiring such person to appear before the justice before whom the inquiry is being held or is intended to be held at a time and place mentioned therein to give evidence respecting the charge and to bring with him any documents in his possession or under his control relating thereto.

2. **Service and proof.**—Such subpœna shall be served personally upon the person to whom it is directed, and an affidavit of such service by a person affecting the same purporting to be made before a justice, shall be sufficient proof thereof. 55-56 V., c. 29, s. 584.

In an Ontario case it was held that it was competent for a judge of the High Court or a judge of the County Court to make an order for the issue of a subpoena to witnesses in another province to compel their attendance upon an appeal to the General Sessions from the action of justices of the peace under secs. 74 and 752. R. v. Gillespie (1894), 16 Ont. P. R., 155.

677. Warrant for defaulting witness.—If the person served with a subpœna as provided by the last preceding section, does not appear at the time and place specified therein, and no just excuse is offered for his non-appearance, the justice holding the inquiry, after proof upon oath that the subpœna has been served, may issue a warrant under his hand directed to any constable or peace officer in the district, county or place where such person is, or to all constables or peace officers in such district, county or place, directing him, them or any of them to arrest such person and bring him before the said justice or any other justice at a time and place mentioned in such warrant in order to testify as aforesaid.

2. **Form.—Endorsement.**—The warrant may be in form 15, or to the like effect; and if necessary, may be endorsed in the manner provided by section six hundred and sixty-two and executed in a district, county or place other than the one therein mentioned. 55-56 V., c. 29, s. 584.

HEARING AND CONNECTED PROCEDURE.

678. Witness refusing to be examined.—Commitment to gaol.—Whenever any person appearing, either in obedience to a summons or subpœna, or by virtue of a warrant, or being present and being verbally required by the justice to give evidence, refuses to be sworn, or having been sworn, refuses to answer such questions as are put to him, or refuses or neglects to produce any documents which he is required to produce, or refuses to sign his

depositions without in any such case offering any just excuse for such refusal, such justice may adjourn the proceedings for any period not exceeding eight clear days, and may in the meantime by warrant in form 16, or to the like effect, commit the person so refusing to gaol, unless he sooner consents to do what is required of him.

2. **Further commitment.**—If such person, upon being brought up upon such adjourned hearing, again refuses to do what is required of him, the justice, if he sees fit, may again adjourn the proceedings, and commit him for the like period, and so again from time to time until such person consents to do what is required of him.

3. **Saving.**—Nothing in this section shall prevent such justice from sending any such case for trial, or otherwise disposing of the same in the meantime, according to any other sufficient evidence taken by him. 55-56 V., c. 29, s. 585.

To justify a magistrate in committing a witness under this section for refusing to answer a question put to him upon a preliminary enquiry, it must appear not only that the witness refused without just excuse to answer, but that the question asked was in some way relevant to the charge. Re Ayotte (1905), 9 C. C. C., 133.

See also R. v. Saunders (1897), 3 C. C. C., 278.

679. Preliminary inquiry.—A justice holding a preliminary inquiry may in his discretion,—

(a) **Powers of justice.—Addresses.**—Permit or refuse permission to the prosecutor, his counsel or attorney, to address him in support of the charge, either by way of opening or summing up the case, or by way of reply upon any evidence which may be produced by the person accused;

(b) **Further evidence.**—Receive further evidence on the part of the prosecutor after hearing any evidence given on behalf of the accused;

(c) **Adjournment of hearing.**—Adjourn the hearing of the matter from time to time, and change the place of hearing, if from the absence of witness, the inability of a witness who is ill to attend at the place where the justice usually sits, or from any other reasonable cause, it appears desirable to do so, and may remand the accused, if required, by warrant in form 17: Provided that no such remand shall be for more than eight clear days, the day following that on which the remand is made being counted as the first day;

(d) **Inquiry may be private.**—Order that no person other than the prosecutor and accused, their counsel and solicitors shall have access to or remain in the room or building in which

the inquiry is held, if it appears to him that the ends of justice will be best answered by so doing.

(e) **Regulating course of inquiry.**—Regulate the course of the inquiry in any way which may appear to him desirable, and which is not inconsistent with the provisions of this Act.

2. **Verbal remand for three days.—Custody of accused.**—If any remand under this section is for a time not exceeding three clear days the justice may verbally order the constable or other person in whose custody the accused then is, or any other constable or person named by the justice in that behalf, to keep the accused person in his custody and to bring him before him or such other justice as shall then be acting at the time appointed for continuing the examination. 55-56 V., c. 29, s. 586.

Where evidence on a preliminary enquiry is commenced before one justice of the peace and finished before two justices, a committal by the two is irregular unless both have heard all the evidence. Re Nunn (1899), 2 C. C. C., 429.

Where on a preliminary enquiry a remand is desired for a time exceeding three clear days, the justice may remand only by warrant, declaring that it appears to be necessary to remand the accused; and an informal remand endorsed upon the warrant is insufficient. R. v. Holley (1893), 4 C. C. C., 510.

A magistrate holding a preliminary enquiry for an indictable offence may not proceed to summarily convict on the evidence given therein for both the accused and the prosecutor for a lesser offence included in the offence charged, although such lesser offence, if originally charged, would have been within his jurisdiction for trial. Ex parte Duffy (1901), 8 C. C. C., 277; R. v. Mines (1894), 1 C. C. C., 217.

A remand by a magistrate in a preliminary enquiry must be by warrant if made for more than three clear days, and it is essential that the accused should be personally present before the magistrate. Re Sarault (1905), 9 C. C. C., 448.

A warrant of remand signed with the addition of the letters "J. P." after the signature, and containing a reference to the signer or "some other justice" for the county must be taken to shew jurisdiction on its face. Ex parte Hilchie (1906), 11 C. C. C., 85.

680. Hearing may be resumed during time of remand.—The justice may order the accused person to be brought before him, or before any other justice for the same territorial division, at any time before the expiration of the time for which such person has been remanded, and the gaoler or officer in whose custody he then is shall duly obey such order. 55-56 V., c. 29, s. 588.

See Re Nunn (1899), 2 C. C. C., 429.

681. Bail on remand.—If the accused is remanded as aforesaid, the justice may discharge him, upon his enterng into a recognizance in form 18, with or without sureties in the discre-

tion of the justice, conditioned for his appearance at the time and place appointed for the continuance of the examination. 55-56 V., c. 29, s. 587.

Any indemnity given to the bondsmen, whether by the prisoner or by a third person, is illegal. Consolidated Exploration & Finance Co. v. Musgrave (1900), 1 Ch., 37.
See also Re Frederick Barrett's Bail (1903), 7 C. C. C., 1.

682. Evidence for prosecution to be taken.—When the accused is before a justice holding an inquiry, such justice shall take the evidence of the witnesses called on the part of the prosecution.

2. **Upon oath.—Cross-examination.**—The evidence of the said witnesses shall be given upon oath and in the presence of the accused; and the accused, his counsel or solicitor, shall be entitled to cross-examine them.

3. **In writing.**—The evidence of each witness shall be taken down in writing in the form of a deposition, which may be in form 19, or to the like effect.

4. **Read over and signed.**—Such deposition shall in the presence of the accused, and of the justice, at some time before the accused is called on for his defence, be read over to and signed by the witness and the justice.

5. **Where signed.**—The signature of the justice may either be at the end of the deposition of each witness, or at the end of several or of all the depositions in such a form as to show that the signature is meant to authenticate each separate deposition. 55-56 V., c. 29, s. 590.

Notes of evidence taken by the coroner at an inquest which do not contain the precise expressions of the witness, but a summary only of the evidence, are not admissible in contradiction of the witness' testimony in a subsequent proceeding unless signed by the witness, or unless read over to and acquiesced in by him.
The witness may in such case be cross-examined as to any material statements made by him at the inquest, and witnesses may be called to show that he then made a different and contradictory statement. R. v. Ciarlo (1897), 1 C. C. C., 157.
Non-compliance with this section as to the signing of the depositions taken before magistrates in summary proceedings is not a matter affecting the jurisdiction of the magistrates to convict. Ex parte Doherty (1894), 3 C. C. C., 310.
The deposition of a deceased witness may be used in evidence apart from sec. 999 of the Code, although it does not "purport to be signed by the justices by or before whom the same purports to have been taken," but, where it is not admissible by virtue of sec. 999, it must be affirmatively shown that all the formalities required to be observed in taking depositions have been complied with. R. v. Hamilton (1898) 2 C. C. C., 391.

The expressions "entitled to cross-examine" and "full opportunity to cross-examine" as used in Code secs. 682 and 999, imply for the accused the right to hear the evidence delivered in his presence, to catch the words as they fall from the lips of the witness, and to mark his expression and demeanour while testifying. R. v. Lepine (1900), 4 C. C. C., 145.

Where on a preliminary inquiry before a magistrate the witnesses were sworn by him and were then taken into another room and their evidence in chief taken by a stenographer and not in the presence of the magistrate, such depositions are illegally taken, although the prisoner's counsel had the opportunity of afterwards cross-examining the witnesses before the magistrate.

The objection to the irregularity is not waived by the cross-examination of the witnesses on the prisoner's behalf on their return to the magistrate's presence, if the objection is taken by the prisoner's counsel before he proceeds to cross-examine.

Both the commitment for trial and the indictment founded on such illegal depositions are invalid and should be set aside. R. v. Traynor (1901), 4 C. C. C., 410.

Where the cross-examination of a witness for the prosecution upon a preliminary enquiry is interrupted by the illness of the witness, and the magistrate, in the absence of the accused and of his counsel, afterwards obtains the witness' signature to the depositions, but neither the witness nor the prisoner's counsel re-attends the inquiry to complete the cross-examination, there has been no full opportunity to cross-examine so as to admit such depositions in evidence at the trial upon proof of the continued illness of the witness.

There was no waiver of the right to continue the cross-examination by the failure of prisoner's counsel to attend on the adjourned inquiry when the witness was not present or by the prisoner himself stating thereat that he had nothing to say.

A magistrate should not obtain a witness' signature to a deposition in the absence of the accused. R. v. Trevane (1902), 6 C. C. C., 125.

Depositions to which the magistrate had affixed his signature, although such signature was not placed at the foot or end thereof, are sufficiently signed for the purposes of a "charge" brought thereunder under the speedy trials clauses. R. v. Jodrey (1905), 9 C. C. C., 477.

In matters of summary conviction falling under the Criminal Code the depositions must be taken in writing, otherwise the conviction will be quashed. The irregularity is not a mere defect of form and is not cured by sec. 1129 of the Code. Re Lacroix (1907), 12 C. C. C., 297.

683. Depositions in writing or by stenographer.—Proviso.—Every justice holding a preliminary inquiry shall cause the depositions to be written in a legible hand and on one side only of each sheet of paper on which they are written: Provided that the evidence upon such inquiry or any part of the same may be taken in shorthand by a stenographer who may be appointed by the justice and who before acting shall make oath that he shall truly and faithfully report the evidence.

2. **In latter case, how authenticated.**—Where evidence is so taken, it shall not be necessary that such evidence be read over to or signed by the witness, but it shall be sufficient if the transcript be signed by the justice and be accompanied by an affidavit

of the stenographer that it is a true report of the evidence. 55-56 V., c. 29, s. 590.

See note to preceding section.

684. Depositions in general to be read to accused.—After the examination of the witnesses produced on the part of the prosecution has been completed, and after the depositions have been signed as aforesaid, the justice unless he discharges the accused person, shall ask him whether he wishes the depositions to be read again, and unless the accused dispenses therewith shall read or cause them to be read again.

2. **Accused to be addressed.**—When the depositions have been again read, or the reading dispensed with, the accused shall be addressed by the justice in these words, or to the like effect:

In these words. 'Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial notwithstanding such promise or threat.'

3. **Statement of accused.—Form.**—Whatever the accused then says in answer thereto shall be taken down in writing in from 20, or to the like effect, and shall be signed by the justice and kept with the depositions of the witnesses and dealt with as hereinafter provided. 55-56 V., c. 29, s. 591.

The statement made by the accused person before the justice may, if necessary, upon the trial of such person, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same. Section 1001.

Upon a preliminary enquiry it is proper for the magistrate to ask the accused to sign the statement of the accused made under Code sec. 684, even where the prisoner's answer to the statutory question is "I have nothing to say." R. v. Golden (1905), 10 C. C. C., 278.

685. Confession or admission of accused.—Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement, made at any time by the person accused or charged, which by law would be admissible as evidence against him. 55-56 V., c. 29, s. 592.

A confession in order to be admissible must have been given voluntarily, and not under fear of any threat or under hope of any promise.

Confessions obtained by saying to the accused person the following words are inadmissible:—

"Tell me where the things are and I will be favorable to you." R. v. Cass (1784), 1 Leach, 328.

"You had better tell me all you know." R. v. Kingston (1830), 4 C. & P., 387.

"You had better tell where you got the property." R. v. Dunn (1831), 4 C. & P., 543.

"You had better split and not suffer for all of them." R. v. Thomas (1834), 6 C. & P., 353.

The test is whether the inducement held out to the prisoner was such as might tend to make his confession an untrue one. R. v. Thomas (1836), 7 C. & P., 345 (Coleridge J.)

A letter given by a prisoner to a jailer to post is evidence against him. R. v. Derrington (1826), 2 C. & P., 418.

But if the letter is addressed to his wife, it is inadmissible. R. v. Pamenter (1872), 12 Cox C. C., 177.

See also R. v. Court (1836), 7 C. & P., 486; R. v. Doherty (1874), 13 Cox C. C., 23; R. v. Parker (1861), 30 L. J. M. C., 144; R. v. Simpson (1834), 1 Moody C. C., 410; R. v. Wild (1835), 1 Moody C. C., 452; R. v. Holmes (1843), 1 C. & K., 248; R. v. Tinckler (1781), 1 East P. C., 354.

Admissions obtained from an accused person after representations made to her by persons in authority to the effect that the evidence was very strongly against her, that another person, who was her paramour, was suspected, and that it would be to her best interests to tell what she knew, are not inadmissible as not being made voluntarily, or as being procured by threat or inducement. R. v. Viau (1898), R. J. Q., 7 Q. B., 362.

A confession by an accused person charged with stealing post-letters, induced by a false statement made to him by a detective employed by the prosecution, in presence of a post office inspector, that the accused had been seen taking the letters, will render the confession inadmissible in evidence against the accused. R. v. MacDonald (1896), 2 C. C C., 221.

An admission of guilt made by a party charged with a crime to a person in authority under the inducement of a promise of favour, or by reason of menaces or under terror, is inadmissible in evidence.

The Indian Agent, appointed under the Indian Act for the Indian Reserve upon which an accused Indian lives, is a person in authority; and to allow in evidence a confession made to him it must appear that no inducement was offered to the accused to make it.

The onus of proving that the alleged confession was not made under an inducement or threat is on the Crown. R. v. Pah-cah-pah-ne-capi (1897), 4 C. C. C., 93; R. v. Rose (1898), 67 L. J. Q. B., 289; R. v. Thompson (1893), 2 Q. B. D., 12.

Where a prisoner made an admission of guilt, being induced to do so by a police officer who said, "the truth will go better than a lie. If any one prompted you to do it you had better tell about it," it was held that the inducement invalidated the admission. R. v. Romp (1889), 17 O. R., 567.

See also R. v. Bates, 11 Cox C. C., 606; R. v. Fennell (1881), 7 Q. B. D., 147.

Evidence is inadmissible of a confession by the accused that he had stolen money from his employer, when such confession was induced by a statement of the employer that it would be better for the accused to confess, and that if he did not do so, he, the employer, would send for an officer. R. v. Jackson (1898), 2 C. C. C., 149.

See also R. v. Baldry (1852), 2 Den. C. C., 430; R. v. Jarvis (1867), L. R., 1 C. C. R., 96.

To justify the admission in evidence in extradition proceedings of an alleged confession of the prisoner, it must be affirmatively proved that such confession was free and voluntary, and was not preceded by any inducement held out by a person in authority, or was not made until after such inducement had clearly been removed. Re Ockerman (1898), 2 C. C. C., 262.

Where an alleged confession is received in evidence after objection by the accused, and the trial judge before the conclusion of the trial reverses his ruling and strikes out the evidence of the alleged confession, at the same time directing the jury to disregard it, the jury should be discharged and a new jury impanelled. R. v. Sonyer (1898), 2 C. C. C., 501.

Admissions made by a prisoner to a police officer in respect of the charge upon which he is in custody, are admissible in evidence, although made in response to questions put by the officer, if the trial judge finds that the answers were not unduly or improperly obtained having regard to the circumstances of the particular case. R. v. Elliott (1899), 3 C. C. C., 95.

A confession which is preceded by a statement from a person in authority, which may have operated as an inducement to the prisoner to make the confession, will, notwithstanding, be admissible in evidence if he were duly cautioned after the inducing statement, and before the confession itself, by the magistrate who received the same. R. v. Lai Ping (1904), 8 C. C. C., 467.

The rector of a cathedral is a person in authority over the choir boys with respect to the investigation of an alleged assault committed by them while on the way to a meeting of the choir, and answers of a choir boy elicited by the rector and the choirmaster upon such investigation and stated to be only for the purpose of that enquiry, are not admissible in evidence against the choir boy afterwards prosecuted for the assault without proof that the statement was voluntarily made. R. v. Royds (1904), 8 C. C. C., 209.

Any voluntary statement made by the accused person tending to connect himself, either directly or indirectly, with the commission of the crime charged, is admissible in evidence against the accused whether such statement is or is not a "confession."

Where two prisoners are being jointly tried for an offence, a voluntary admission made by one of them is evidence against himself only, and if it implicates a fellow prisoner the trial judge should warn the jury that the statement is evidence only against the person making it and should not be considered in weighing the evidence against the fellow prisoner. R. v. Martin (1905), 9 C. C. C., 371.

There is a distinction between confessions obtained before and after arrest, the arrest itself constituting an inducement or pressure upon the accused to speak; and in order to satisfy the onus upon the Crown of proving that a confession in answer to questions put by a constable to a prisoner was voluntary, it must be shewn that the accused was warned that what he said might be used against him.

A confession obtained from a person under arrest for theft in answer to questions put by a police officer without any warning being given to the prisoner is not admissible against him upon a charge of murder subsequently preferred. R. v. Kay (1904), 9 C. C. C., 403.

686. Witnesses for the defence.—After the proceedings required by section six hundred and eighty-four are completed the accused shall be asked if he wishes to call any witnesses.

2. **Evidence to be taken down.**—Every witness called by the accused who testifies to any fact relevant to the case shall be

heard, and his deposition shall be taken in the same manner as the depositions of the witnesses for the prosecution. 55-56 , c. 29, s. 593.

If a justice of the peace neglects to ask or refuses to allow an accused person to call witnesses for his defence, and commits him for trial, it is a serious irregularity, but only relates to procedure, and will not render the proceedings null and void, so as to justify the liberation of the accused person on a writ of habeas corpus. Ex parte Burke (1896), 2 Rev. de Jurisp., 151.

ADJUDICATION AND SUBSEQUENT STEPS AND BAIL.

687. Accused discharged if no case.—When all the witnesses on the part of the prosecution and the accused have been heard the justice shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him.

2. **Recognizances void.**—In such case any recognizances taken in respect of the charge shall become void, unless some person is bound over to prosecute under the provisions of the next following section. 55-56 V., c. 29, s. 594.

Justices of the Peace have no power on a preliminary investigation before them of a charge of unlawfully wounding, to reduce the charge to one of common assault, over which they would have summary jurisdiction.

A conviction recorded by justices in such a case upon a plea of guilty to the charge as reduced, is not a bar to an indictment for unlawfully wounding, based upon the same state of facts, and does not support a plea of autrefois convict. R. v. Lee (1897), 2 C. C. C., 233.

688. Prosecutor may be bound over to prosecute.—If the justice discharges the accused, and the person preferring the charge desires to prefer an indictment respecting the said charge, he may require the justice to bind him over to prefer and prosecute such an indictment, and thereupon the justice shall take his recognizance to prefer and prosecute an indictment against the accused before the court by which such accused would be tried if such justice had committed him, and the justice shall deal with the recognizance, information and depositions in the same way as if he had committed the accused for trial.

2. **Recognizance.**—Such recognizance may be in form 21, or to the like effect. 55-56 V., c. 29, s. 595.

A prosecutor bound over at his own request to prefer an indictment after the discharge of the accused on a preliminary inquiry, is only permitted to appear by counsel before the grand jury when the practice of the court so authorizes; and the practice in the district of Montreal requires a formal application to the court for permission.

The accused may apply for security for costs under Code sec. 689 at the time of the prosecutor's application for leave to go before the grand jury.

Where counsel for the private prosecutor prepared an indictment and had it signed by the Clerk of the Crown, but without leave of the Court or notice to the Crown prosecutors, preferred the indictment and examined witnesses before the grand jury, a true bill returned thereon will not necessarily be quashed; but security for costs will be ordered on the defendant's application in like manner as would have been done under Code sec. 689 upon the prosecutor's application for leave. R. v. Hoo Yoke (1905), 10 C. C. C., 211.

689. Prosecutor ordered to pay costs, when.—If the prosecutor so bound over at his own request does not prefer and prosecute such an indictment, or if the grand jury does not find a true bill, or if the accused is not convicted upon the indictment so preferred, the prosecutor shall, if the court so direct, pay to the accused person his costs, including the costs of his appearance on the preliminary inquiry.

2. **Security for costs may be ordered.**—The court before which the indictment is to be tried or a judge thereof may in its or his discretion order that the prosecutor shall not be permitted to prefer any such indictment until he has given security for such costs to the satisfaction of such court or judge. 55-56 V., c. 29, s. 595.

See note to preceding section.

The person filling the office of Commissioner of the Dominion Police has, as such, no legal capacity to represent and act on behalf of Her Majesty the Queen, and in laying an information in which he designated himself as such Commissioner of the Dominion Police he acted as a private individual and not as the legal representative of the Crown, although he declared that he was acting as such Commissioner on behalf of Her Majesty the Queen.

The accused having been discharged, and the Commissioner having bound himself by recognizance to prefer and prosecute an indictment on the charge contained in his information, and the Grand Jury having thrown out the bill of indictment, the Commissioner was held to be personally liable for the costs incurred by the accused on the preliminary enquiry and before the Court of Queen's Bench. R. v. St. Louis (1897), 1 C. C. C., 141.

An order made by the presiding judge of a criminal superior court awarding costs against the private prosecutor in respect of an indictment for assault on which the grand jury found no bill, is not subject to review by or appeal to the court *en banc*. R. v. Mosher (1899), 3 C. C. C 312.

690. Committal of accused for trial.—If a justice holding a preliminary inquiry thinks that the evidence is sufficient to put the accused on his trial, he shall commit him for trial by a warrant of commitment, which may be in form 22, or to the like effect. 55-56 V., c. 29, s. 596.

The phrase "committed to prison" does not necessarily mean "received into prison," but, both in common parlance and in legal phrase-

ology means "when the order is made under which the person is to be kept in prison." Mullins v. Surrey (1882), 51 L. J. Q. B., 145, 149.

The word "committal" signifies the act of the magistrate who issues the warrant of committal, and not the act of the officer who executes it by delivering the person therein named into the custody of the gaoler. Mews v. R. (1882), 8 A. C., 332, 344 (H. L.)

A justice's warrant of commitment for trial must describe an offence for which a commitment for trial can be legally made. Threats verbally made to burn the complainant's buildings are not indictable under the Criminal Code, and give rise only to proceedings to force the offender to give security to keep the peace. Ex parte Welsh (1898), 2 C. C. C., 35.

The duty of a judge under a writ of habeas corpus is to examine whether the committing magistrate has jurisdiction, whether the committal is legal, and whether any crime known to the law is alleged to have been committed, but not to enquire into or revise the magistrate's decision as regards its propriety or impropriety on the merits. R. v. Gillespie (1898), 1 C. C. C., 551.

See also Dagenais v. Ellis (1896), 3 Rev. de Jurisp., 96; R. v. Lee (1897) 2 C. C. C., 233; R. v. Cavelier (1896), 11 Man. L. R., 333; R. v. McDiarmid (1899), 19 C. L. T., 329.

A bastardy statute specially authorizing a commitment until an order of filiation is made or refused, is not complied with if the warrant of commitment directs detention until the prisoner is "discharged in due course of law," and the variance is a good ground for discharge under *habeas corpus*. Ex parte O'Donnell (1904), 7 C. C. C., 367.

The magistrate who holds the preliminary investigation on a charge preferred against an accused person, may commit him on any other one or more charges disclosed by the evidence. R. v. Mooney (1905), 11 C. C. C., 333.

691. Accused entitled to copy of depositions.—Every one who has been committed for trial, whether he is bailed out or not, shall be entitled at any time before the trial to have copies of the depositions and of his own statement, if any, from the officer who has custody thereof, on payment of a reasonable sum not exceeding five cents for each folio of one hundred words. 55-56 V., c. 29, s. 597.

692. Recognizances to prosecute or give evidence.—When any one is committed for trial the justice holding the preliminary inquiry may bind over to prosecute some person willing to be so bound, and bind over every witness whose deposition has been taken, and whose evidence in his opinion is material, to give evidence at the court before which the accused is to be indicted.

2. **Contents of.**—Every recognizance so entered into shall specify the name and surname of the person entering into it, his occupation or profession, if any, the place of his residence and the name and number, if any, of any street in which it may be, and whether he is owner or tenant thereof or a lodger therein.

3. **Forms.**—Such recognizance may be either at the foot of the deposition or separate therefrom, and may be in form 23, 24

or 25, or to the like effect, and shall be acknowledged by the person entering into the same, and be subscribed by the justice or one of the justices before whom it is acknowledged.

4. **Obligation of recognizance.**—Every such recognizance shall bind the person entering into it to prosecute or give evidence (both or either as the case may be), before the court by which the accused shall be tried. 55-56 V., c. 29, s. 598.

693. Warrant for arrest of absconding witness.—Whenever any person is bound by recognizance to give evidence before a justice, or any criminal court, in respect of any offence under this Act, any justice, if he sees fit, upon information being made in writing and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person.

2. **Committal to give evidence.**—If such person is arrested, any justice, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties.

3. **Copy of information.**—Any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued. 55-56 V., c. 29, s. 598.

694. Witness refusing to be bound over.—Any witness who refuses to enter into or acknowledge any such recognizance as aforesaid may be committed by the justice holding the inquiry by a warrant in form 26, or to the like effect, to the prison for the place where the trial is to be had, there to be kept until after the trial, or until the witness enters into such recognizance as aforesaid before a justice having jurisdiction in the place where the prison is situated.

2. **Discharge of witness.**—If the accused is afterwards discharged any justice having such jurisdiction may order any such witness to be discharged by an order which may be in form 27, or to the like effect. 55-56 V., c. 29, s. 599.

695. Transmission of record to clerk of court.—The information, if any, the depositions of the witnesses, the exhibits thereto, the statement of the accused, and all recognizances entered into, and also any depositions taken before a coroner if any such have been sent to the justice, shall as soon as may be after

the committal of the accused be transmitted to the clerk or other proper officer of the court by which the accused is to be tried.

2. **To other officer when place of trial changed.**—When any order changing the place of trial is made the person obtaining it shall serve it, or an office copy of it, upon the person then in possession of the said documents, who shall thereupon transmit them and the indictment, if found, to the officer of the court before which the trial is to take place. 55-56 V., c. 29, s. 600.

It has been held that where the accused is admitted to bail under Code sec. 696 without being committed for trial, the depositions need not be transmitted by the justice, under this section, to the officer of the court in which an indictment is to be preferred. R. v. Gibson (1896), 3 C. C. C., 451.

A person discharged by a justice on a preliminary enquiry for an indictable offence may be summoned again before the same or another justice on a fresh information for the same offence. If the accused is committed for trial on the second preliminary enquiry, the depositions on the first, when he was discharged, need not be transmitted to the trial court under Code sec. 600. R. v. Hannay (1905), 11 C. C. C., 23.

696. Rule as to bail.—When two justices may admit.—When any person appears before any justice charged with an indictable offence punishable by imprisonment for more than five years, other than treason or an offence punishable with death or an offence under any of the sections, seventy-six to eighty-six inclusive, and the evidence adduced is, in the opinion of such justice, sufficient to put the accused on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the justice, jointly with some other justice, may admit the accused to bail upon his procuring and producing such surety or sureties as, in the opinion of the two justices, will be sufficient to ensure his appearance at the time and place when and where he ought to be tried for the offence; and thereupon the two justices shall take the recognizances of the accused and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave.

2. **One justice may admit, when.**—In any case in which the offence committed or suspected to have been committed is an offence punishable by imprisonment for a term less than five years any one justice before whom the accused appears may admit to bail in manner aforesaid, and such justice or justices may, in his or their discretion, require such bail to justify upon oath before him or them as to their sufficiency.

3. **Committal on default.**—In default of such person procur-

ing sufficient bail, such justice or justices may commit him to prison, there to be kept until delivered according to law.

4. **Form.**—The recognizance mentioned in this section shall be in form 28. 55-56 V., c. 29, s. 601.

An accused person committed in default of finding sureties, under Code sec. 696, is not committed "for trial" but "until delivered according to law," and cannot be tried at the County Judge's Criminal Court. R. v. Gibson (1896), 3 C. C. C., 451.

See also R. v. Smith (1898), 3 C. C. C., 467, dissenting from R. v. Lawrence (1896), 1 C. C. C., 295.

An accused person who has been committed for trial at the preliminary enquiry, or who has been bailed under Code sec. 696 to appear for trial, has no right to elect a speedy trial without a jury unless he is in actual custody at the time of electing. R. v. Komiensky (1903), 6 C. C. C., 524.

697. Appearance at court of sessions of the peace.—Where the offence is one triable by the court of general or quarter session of the peace and the justice is of opinion that it may better or more conveniently be so tried, the condition of the recognizance may be for the appearance of the accused at the next sittings of that court notwithstanding that a sitting of a superior court of criminal jurisdiction capable of trying the offence intervenes. 63-64 V., c. 46, s. 3.

698. Bail after committal.—Order for.—By two justices.—Warrant.—In case of any offence other than treason or an offence punishable with death, or an offence under any of the sections seventy-siv to eighty-six inclusive, where the accused has been finally committed as herein provided, any judge of any superior or county court, having jurisdiction in the district or county within the limits of which the accused is confined, may, in his discretion, on application made to him for that purpose, order the accused to be admitted to bail on entering into a recognizance with sufficient sureties before two justices, in such amount as the judge directs, and thereupon the justices shall issue a warrant of deliverance as hereinafter provided, and shall attach thereto the order of the judge directing the admitting the accused to bail.

2. **Form.**—Such warrant of deliverance shall be in form 29. 55-56 V., c. 29, s. 602.

In regard to the considerations which will prevail as to the granting of the application, and the amount to be fixed, see R. v. Stewart *et al* (1900), 4 C. C. C., 131; R. v. Brynes (1862), 8 U. C. L. J., 76; R. v. Keeler (1877), 7 Ont. P. R., 117; R. v. McCormick (1864), 17 Irish C. L. R., 411.

699. Bail by superior court.—No judge of a county court or justices shall admit any person to bail accused of treason or an offence punishable with death, or an offence under any of the sections, seventy-six to eighty-six inclusive, nor shall any person be admitted to bail, except by order of a superior court of criminal jurisdiction for the province in which the accused stands committed, or of one of the judges thereof, or in the province of Quebec, by order of a judge of the Court of King's Bench or Superior Court. 55-56 V., c. 29, s. 603.

700. Bail after committal.—Notice to justice.—When any person has been committed for trial by any justice, the prisoner, his counsel, solicitor or agent may notify the committing justice that he will, as soon as counsel can be heard, move before a superior court of the province in which such person stands committed, or one of the judges thereof, or the judge of the county court, if it is intended to apply to such judge, under section six hundred and ninety-eight, for an order to the justice to admit such prisoner to bail.

2. **Record to be transmitted.**—Such committing justice shall, as soon as may be, after being so notified, transmit to the clerk of the Crown, or the chief clerk of the court, or the clerk of the county court, or other proper officer, as the case may be, endorsed under his hand and seal, a certified copy of all informations, examinations and other evidence touching the offence wherewith the prisoner has been charged, together with a copy of the warrant of commitment, and the packet containing the same shall be handed to the person applying therefor for transmission, and it shall be certified on the outside thereof to contain the information concerning the case in question.

3. **Penalty for neglect.**—If any justice neglects to comply with the foregoing provisions of this section, according to the true intent and meaning thereof, the court, to whose officer any such information, examination, other evidence, or warrant of commitment ought to have been delivered, shall, upon examination and proof of the offence in a summary manner, impose such fine upon such justice as the court thinks fit. 55-56 V., c. 29, s. 604.

Where there is danger that accused persons, committed for trial for alleged offences against the election laws, may purposely allow their bail to be forfeited with the view of avoiding scandal, the court, on an application to admit them to bail, should require the bail to be of a substantial amount. R. v. Stewart et al. (1900), 4 C. C. C., 131.

Where a prisoner committed for trial on a charge of manslaughter would ordinarily be admitted to bail, bail will not be refused because the Crown prosecutor swears to a belief that he can prove the offence to have been murder. R. v. Spicer (1901), 5 C. C. C., 229.

The mere circumstance that the accused is able to give any reasonable amount of bail which may be asked of him is not *per se* a ground for the application. R. v. McCormick, 17 Irish C. L. R., 411.

It is for the court to exercise a sound discretion, and if satisfied that notwithstanding the ordering of bail, the prisoners are, in view of all the circumstances, likely to be forthcoming at the proper time to answer the charge, bail may be ordered. R. v. Keeler (1877), 7 Ont. P. R., 117, 120.

The court should not, on an application for bail, weigh and decide the question of credibility of witnesses. R. v. Keeler, supra.

Where a habeas corpus has been issued, the court has power to admit persons to bail when accused of any felony, including murder. R. v. Fitzgerald 3 U. C. R. (O. S.), 300; R. v. Higgins, 4 U. C. R. (O. S.), 83.

A person committed for trial in respect of an indictable offence which was a felony before the Cr. Code (1892), is not entitled as of right to bail and it is discretionary with the Superior Court exercising *habeas corpus* jurisdiction to allow or refuse bail in such cases.

In determining whether or not bail should be granted, the probability of the party appearing for trial in case he is bailed is the principal consideration, and the question of guilt may properly be considered in determining the degree of such probability.

With respect to indictable offences which were misdemeanours before the Cr. Code 1892, the accused committed for trial is entitled to bail as a matter of right on *habeas corpus*. Ex parte Fortier (1902), 6 C. C. C., 191.

See also R. v. Gottfriedson (1906), 10 C. C. C., 239.

701. Order upon application for bail.—Upon application for bail as aforesaid to any such court or judge the same order concerning the prisoner being bailed or continued in custody, shall be made as if the prisoner was brought up upon a *habeas corpus*. 55-56 V., c. 29, s. 604.

702. Warrant of deliverance.—Whenever any justice or justices admit to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison, a warrant of deliverance under his or their hands and seals, requiring the said keeper to discharge the person so admitted to bail if he is detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same. 55-56 V., c. 29, s. 605.

703. Warrant for the arrest of person bailed about to abscond.—Whenever a person charged with any offence has been bailed in manner aforesaid, it shall be lawful for any justice, if he sees fit, upon the application of the surety or of either of the sureties of such person and upon information being made in writing and on oath by such surety, or by some person on his behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, to issue his warrant

for the arrest of the person so bailed, and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, to commit such person when so arrested to gaol until his trial or until he produces another sufficient surety or other sufficient sureties, as the case may be, in like manner as before. 55-56 V. c. 29, s. 606.

704. Delivery of accused to keeper under warrant.—The constable or any of the constables, or other person to whom any warrant of commitment authorized by this or any other Act or law is directed, shall convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with the warrant, to the keeper of such gaol or prison, who shall thereupon give the constable or other person delivering the prisoner into his custody, a receipt for the prisoner, setting forth the state and condition of the prisoner when delivered into his custody.

2. **Form.**—Such receipt shall be in form 30. 55-56 V., c. 29, s. 607.

PART XV.

SUMMARY CONVICTIONS.

INTERPRETATION.

705. Definitions.—In this Part, unless the context otherwise requires,—

(a) '**Territorial division.**'—'Territorial division' means district, county, union of counties, township, city, town, parish or other judicial division or place;

(b) '**The court.**'—'The court' in the sections of this Part relating to justices stating or signing cases means and includes any superior court of criminal jurisdiction for the province in which the proceedings in respect of which the case is sought to be stated are carried on;

(c) '**District**,' '**county.**'—'District' or 'county' includes any territorial or judicial division or place in and for which there is such judge, justice, justice's court, officer or prison as is mentioned in the context;

(d) '**Common gaol**,' '**prison.**'—'Common gaol' or 'prison' for the purpose of this Part means any place other than a penitentiary in which persons charged with offences are usually kept and detained in custody;

(e) **'Clerk of the peace.'**—'Clerk of the peace' includes the proper officer of the court having jurisdiction in appeal under this Part, and, in the province of Saskatchewan or Alberta, and in the Northwest Territories, means the clerk of the Supreme Court of the judicial district within which conviction under this Part takes place or an order is made. R.S., c. 50, s. 102; 55-56 V., c. 29, ss. 839 and 900.

A "lock-up" or small room for the temporary detention of prisoners is not a "common jail" or "prison." In re Burke (1894), 27 N. S. R., 286.

APPLICATION OF PART.

706. Subject to any special provision otherwise enacted with respect to such offence, act or matter, this Part shall apply to,—

(a) **To all cases of summary conviction.**—Every case in which any person commits, or is suspected of having committed, any offence or act over which the Parliament of Canada has legislative authority, and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

(b) **To all cases where an order can be made summarily.**—Every case in which a complaint is made to any justice in relation to any matter over which the Parliament of Canada has legislative authority, and with respect to which such justice has authority by law to make any order for the payment of money or otherwise. 55-56 V., c. 29, s. 840.

The Dominion Parliament has jurisdiction to confer upon justices of the peace appointed under provincial authority jurisdiction to summarily try criminal offences. R. v. Wipper (1901), 5 C. C. C., 17.

If the accused is in fact present before the magistrate, and the magistrate has jurisdiction over the person and the offence, he may lawfully proceed with the hearing of the charge, notwithstanding that the warrant on which the accused was arrested was executed by a person not legally qualified for that purpose. Ex parte Giberson (1898), 4 C. C. C., 537.

Held by the Supreme Court of New Brunswick that the procedure of the Criminal Code as to summary convictions does not apply to corporations; and that as regards charges of a criminal nature, a corporation is not within the statutory term "person" which by the Interpretation Act, R. S. C., 1886, c. 1 (now R. S. C., 1906, c. 1), is declared to include "any body politic and corporate." Ex parte Woodstock Electric Light Co. (1898), 4 C. C. C., 107.

But a Divisional Court of the High Court of Justice of Ontario arrived at a different conclusion in R. v. The Toronto Railway Co. (1898), 2 C. C. C., 471.

In this case it was held that the procedure of the Criminal Code of Canada as to summary convictions applies as well to corporations as to natural persons, and that the fact that a portion of the remedy provided for the recovery of the penalty and costs is personal imprisonment, does not prevent the application of the summary procedure in other respects to corporations.

707. Hearing to be by one or more justices.—Every complaint and information shall be heard, tried, determined and adjudged by one justice or two or more justices as directed by the Act or law upon which the complaint or information is framed or by any other Act or law in that behalf.

2. **May be by one justice unless special Act provides otherwise.**—If there is no such direction in any Act or law then the complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division where the matter of the complaint or information arose: Provided that every one who aids, abets, counsels or procures the commission of any offence punishable on summary conviction, may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed. 55-56 V., c. 29, s. 842.

Under the Liquor License Ordinance, 1891-1892, a single justice of the peace in the N. W. T., had no power to convict on a charge of selling without a license. R. v. Walker (1894), N. W. T., S. C. R., 80.

The disqualification of a justice arising from an action pending against him ceases when he has recovered judgment, though an execution has issued which is unsatisfied. Ex parte Ryan (1894), 4 C. C. C., 485.

The magistrate must not unite in his own person the functions of judge and prosecutor. Monson's Case (1894), 1 Q. B., 750.

It is sufficient to shew that the magistrate might have been influenced, and it need not appear that he was in fact influenced. R. v. Milledge, 4 Q. B. D., 332; R. v. Gaisford (1892), 1 Q. B., 383.

To invalidate a conviction on the ground of bias in the convicting magistrate, it is not necessary that actual bias should be proved, and a conviction will be quashed if the facts justify a reasonable apprehension of bias.

If the accused is aware of the disqualifying circumstances at the time of the hearing before the magistrate, he should take objection then to the magistrate acting.

Where the prosecutor in summary proceedings is the magistrate's father, and the statute under which the prosecution is brought entitles the prosecutor to a share of any fine imposed, the justice is disqualified from adjudicating upon the case. R. v. Steele (1895), 2 C. C. C., 433.

A magistrate is not disqualified on the ground of pecuniary interest from adjudicating upon an offence under the Canada Temperance Act, because he receives a fixed appropriation voted by a Municipal Council, in addition to his regular salary as magistrate, for his services in connection with the enforcement of the Canada Temperance Act, and because such appropriation is paid out of a fund created by the imposition of fines thereunder. Ex parte McCoy (1896), 1 C. C. C., 410.

A magistrate is not disqualified from trying a charge laid by a chief license inspector of unlawfully selling liquors, because of the assistant license inspector's wife being a niece of the magistrate, if the assistant inspector had in fact nothing to do with the laying of the charge, and

took no part in the prosecution. Nor is a magistrate disqualified from adjudicating upon an information by reason of his being a ratepayer of a municipality into whose treasury any fine imposed in the case would be payable when realized. Ex parte Flannagan (1897), 2 C. C. C., 513; Ex parte Gorman (1898), 4 C. C. C., 305; Ex parte Driscoll (1888), 27 N. B. R., 216.

Where the accused was convicted of having unlawfully assaulted the complainant, a married woman, who was the daughter of the convicting justice, the relationship was held to be a good ground for quashing the conviction; but as no objection had been taken by the accused, and as it appeared that the magistrate had acted in good faith, costs were not ordered against him. R. v. Langford (1888), 15 O. R., 52.

The fact that a convicting justice for an offence against the provisions of the Liquor License Act, 1896, is an inspector under the Act, but not for the district where the offence is alleged to have been committed, is not such an interest as to disqualify him. Ex parte Michaud (1896), 4 C. C. C., 569.

The fact that a *qui tam* action is pending against the magistrate at the suit of the father of the accused is not a sufficient ground of bias. Ex parte Thomas Gallagher (1897), 33 C. L. J., 547.

A magistrate is disqualified from trying an information for an offence punishable on summary conviction where there is a *bona fide* action pending against him brought by the husband of the accused for alleged malicious conduct as a judicial officer and for assault.

If the action against the justice is not *bona fide*, but a mere sham to attempt to disqualify him, its pendency will not operate as a disqualification.

The principles which govern the challenge of a juryman for favour are applicable to the disqualification of a justice on the ground of bias. Ex parte Hannah Gallagher (1898), 4 C. C. C., 486.

The connection of the magistrate with a society, which supplied funds part of which were used to make the purchase upon which the prosecution of illegal sale of liquor was based, because of his being an honorary member of the society, but not entitled to take any part in its affairs, is not a ground of disqualification. R. v. Herrell (1898), 1 C. C. C., 510.

See also ex parte McEwen (1906), 12 C. C. C., 97.

The words "every complaint and information" mean a complaint or information under the summary convictions clauses. R. v. Edwards (1898), 2 C. C. C., at p. 100.

When an accused person is summoned to appear before a justice of the peace having jurisdiction to conduct the proceedings without associate justices, other justices of the peace are not entitled to interfere in the preliminary inquiry or summary trial, or to be associated with the summoning justice, except at the latter's request.

A summary conviction by the magistrate who summoned the accused and heard the charge will be supported, although three other magistrates attended the hearing and purported to dismiss the charge, if the latter magistrates sat without the request or consent of the summoning magistrate. R. v. McRae (1897), 2 C. C. C., 49.

The Canada Criminal Code applies to prosecutions under the Liquor License Ordinance (N. W. T.), 1891-1892, for the enforcement of penalties thereunder. R. v. Wilson (1894), 1 C. C. C., 132.

Notwithstanding sections 707 and 708 of the Cr. Code, where a prosecution for an offence under the Canada Temperance Act is to be proceeded with before two justices of the peace, the information must be laid before two justices. Ex parte White (1897), 3 C. C. C., 94.

Both justices must concur in directing the issue of the summons, but

it is not necessary that the information or the summons issued thereon should be signed by more than one of such justices. R. v. Ettinger (1899), 3 C. C. C., 387.

See also Lacerte v. Pepin (1896), R. J. Q., 10 S. C., 542; Thorpe v. Priestnall (1897), 1 Q. B. D., 159; Champagne v. Simard (1895), R. J. Q., 7 S. C., 40.

Where a single justice of the peace has authority to try a charge he may ask other justices to sit with him and a conviction made by all of them jointly is valid. R. v. Leconte (1906), 11 C. C. C., 41.

708. One justice may do all acts before hearing.—Any one justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary preliminary to the hearing, even if by the statute in that behalf it is provided that the information or complaint shall be heard and determined by two or more justices.

2. **And after hearing.**—After a case has been heard and determined one justice may issue all warrants of distress or commitment thereon.

3. **Need not be same justice.**—It shall not be necessary for the justice who acts before or after the hearing to be the justice or one of the justices by whom the case is to be or has been heard and determined.

4. **Justices must be present together when acting.**—If it is required by any Act or law that an information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices shall be present and acting together during the whole of the hearing and determination of the case. 55-56 V., c. 29, s. 842.

See note to preceding section.

709. Title to lands coming into question.—No justice shall hear and determine any case of assault or battery, in which any question arises as to the title to any lands, tenements, hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. 55-56 V., c. 29, s. 842.

INFORMATION AND COMPLAINT.

710. When complaint need not be in writing.—It shall not be necessary that any complaint upon which a justice may make an order for the payment of money or otherwise shall be in writing, unless it is so required by the particular Act or law upon which such complaint is founded.

2. **Or under oath.**—Every complaint upon which a justice is authorized by law to make an order, and every information for any offence or act punishable on summary conviction, may, unless it is by this Part or by some particular Act or law otherwise provided, be made or had without any oath or affirmation as to the truth thereof.

3. **For one offence or matter.**—Every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences.

4. **May be laid by agent.**—Every complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf. 55-56 V., c. 29 s. 845.

If a magistrate's summons is issued on an information purporting to have been sworn at a specified time and place, and the defendant appears thereon and pleads to the charge, the proceedings will not be quashed on certiorari because it is afterwards shewn that the information was not in fact sworn at such time and place. Ex parte Sonier (1896), 2 C. C. C., 121.

Held that when a person is before justices who have jurisdiction to try the case, they need not inquire how he came there, but may try it. R. v. Hughes (1879), 4 Q. B. D., 614.

The warrant of a magistrate is only *prima facie* evidence of the fact recited therein that an information on oath and in writing had been laid. Friel v. Ferguson (1865), 15 U. C. C. P., 584.

A complaint or information is essential as the foundation of summary proceedings, and without it the justice is not authorized in intermeddling, except where he is empowered by statute to convict on view. Paley on Convictions, 7th ed., 72; R. v. Bolton, 1 Q. B., 66.

A charge of stealing "in or from" a building is for one offence only. R. v. White (1901), 4 C. C. C., 430.

If objection is taken before the magistrate all but one charge should be struck out and evidence heard as to that one only. R. v. Alward (1894), 25 O. R., 519.

Held that the disclosure of two offences in the information and evidence taken in reference to both at the trial did not invalidate the conviction for a single offence. R. v. Hazen (1893), 20 Ont. A. R., 633.

A conviction for keeping a house of ill-fame on a date named, "and on other days and times before that day," is sufficiently certain as to time and does not constitute a charge of a distinct offence upon each of those days. R. v. Williams (1876), 37 U. C. Q. B., 540.

A conviction for using profane language on a public street is invalid unless the words complained of are therein set out. R. v. Smith (1899), 31 N. S. R., 411.

A conviction for a second offence under the Canada Temperance Act must show that a second offence was committed after the information had been laid for the first offence. Ex parte Leblanc (1895), 1 C. C. C., 12.

On a proceeding by summons in the nature of a criminal prosecution under the Ontario Election Act, sec. 188, all corrupt practices charged as having been committed by the accused in respect of the same election may be tried together and included in the one judgment of conviction. Re Cross (1900), 4 C. C. C., 173.

Upon a summary hearing of a charge punishable on summary conviction, if the information charges more than one offence all but one should be struck out upon objection taken.

Where the objection so taken by the defendant was overruled and evidence was taken upon the several charges until the conclusion of the prosecutors' case when all but one were abandoned, a conviction upon that one is invalid and should be quashed on appeal. R. v. Austin (1905), 10 C. C. C., 34.

See also R. v. Lizotte (1905), 10 C. C. C., 316; Ex parte Coffon (1905), 11 C. C. C., 48; Ex parte Grundy (1906), 12 C. C. C., 65.

SUMMONS AND WARRANT.

711. Compelling appearance.—Proviso.—Copy of warrant to be served.—The Provisions of Parts XIII and XIV relating to compelling the appearance of the accused before the justice receiving an information for an indictable offence and the provisions respecting the attendance of witnesses on a preliminary inquiry and the taking of evidence thereon, shall, so far as the same are applicable, except as varied by the sections immediately following, apply to any hearing under the provisions of this Part: Provided that whenever a warrant is issued in the first instance against a person charged with an offence punishable under the provisions of this Part, the justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on the person arrested at the time of such arrest.

2. **Summons necessary when.**—Nothing herein contained shall oblige any justice to issue any summons to procure the attendance of a person charged with an offence by information laid before such justice whenever the application for any order may, by law, be made *ex parte*. 55-56 V., c. 29, s. 843.

In an Ontario case it was held that by virtue of the provisions of this section and of section 676 a judge of the High Court or a County Court judge may order a subpoena to issue to witnesses in another province to compel their attendance upon an appeal to the General Sessions from the action of justices of the peace. R. v. Gillespie (1894), 16 Ont. P. R., 155.

Service of a summons to appear before a magistrate to answer a charge of having committed an offence punishable by summary conviction is not validly made although left with the defendant's wife at his usual place of abode, if the defendant was then absent from Canada and remained away until after the hearing, and the magistrate in such a case acquires no jurisdiction over the person of the defendant, and a conviction made in the defendant's absence upon such service will be quashed. Ex parte Donovan (1894), 3 C. C. C., 286.

See also Ex parte Doherty (1894), 32 N. B. R., 375.

The fixing of an inconvenient place for hearing is improper but within the jurisdiction of the Justice of the Peace and therefore not reviewable on motion for prohibition. R. v. Chipman (1897), 1 C. C. C., 81.

If a magistrate's summons is issued on an information purporting to have been sworn at a specified time and place, and the defendant appears

thereon and pleads to the charge, the proceedings will not be quashed on certiorari because it is afterwards shewn that the information was not in fact sworn at such time and place. Ex parte Sonier (1896), 2 C. C. C., 121.

It is discretionary with the magistrate to issue either a summons or a warrant as he might deem best. R. v. McGregor (1895), 2 C. C. C., at p. 413.

A person who appears in answer to a summons, and takes his trial and his chance of acquittal, is considered as having waived any objection to the summons. R. v. Hazen (1893), 20 Ont. A. R., 633.

A summons may be issued upon an information before a Justice of the Peace for an offence punishable on summary conviction, although the information has not been sworn; but before a warrant can be issued to compel the attendance of the accused, there must be an information in writing and under oath. R. v. McDonald (1896), 3 C. C. C., 287.

A magistrate has no jurisdiction to issue a warrant of arrest in the first instance in proceedings under the Summary Convictions clauses of the Code upon an information pledging the informant's suspicions and belief, but not stating the grounds therefor, without first examining the informant or his witnesses as to the grounds of suspicion.

Where the attendance of the accused before the magistrate has been compelled by his illegal arrest upon a warrant issued without jurisdiction, and objection is taken on the hearing but overruled, the summary conviction will be quashed. Ex parte Grundy (1906), 12 C. C. C., 65.

712. Backing warrants.—The provisions of section six hundred and sixty-two relating to the endorsement of warrants shall apply to the case of any warrant issued under the provisions of this Part against the accused, whether before or after conviction, and whether for the apprehension or imprisonment of any such person. 55-56 V., c. 29, s. 844.

713. Summons for witness out of jurisdiction.—A summons may be issued to procure the attendance, on the hearing of any charge under the provisions of this Part of a witness who resides out of the jurisdiction of the justice before whom such charge is to be heard.

2. **Summons and warrant served by peace officer.**—Every such summons and every warrant issued to procure the attendance of a witness, whether in consequence of refusal by such witness to appear in obedience to a summons or otherwise, may be respectively served and executed by the constable or other peace officer to whom the same is delivered or by any other person, as well beyond as within the territorial division of the justice who issued the same. 55-56 V., c. 29, s. 848.

No warrant or other process can be issued on a Sunday for offences punishable only on summary conviction. R. v. Winsor (1866), L. R., 1 Q. B., 289.

714. Hearing in open court.—The room or place in which the justice sits to hear and try any complaint or information shall be deemed an open and public court, to which the public generally may have access so far as the same can conveniently contain them. 55-56 V., c. 29, s. 849.

See sections 644 and 645 as to exclusion of public from court room.

715. Counsel for defendant.—The person against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel, solicitor or agent on his behalf.

2. **Or for complainant or informant.**—Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined, by counsel or attorney on his behalf. 55-56 V., c. 29, s. 850.

The accused is not denied the right to make "full answer and defence" to the charge by reason of the magistrate having stated, after hearing the evidence for the prosecution, that a denial on oath by the accused would not alter his opinion as to her guilt. R. v. McGregor (1895), 2 C. C. C., 410.

Where the presiding magistrate is called as a witness for the defence but refuses to be sworn, a summary conviction made without his evidence should not be quashed unless it is shown that the request to have the magistrate called as a witness was made in good faith by the defence, that the magistrate could give material evidence and that the accused was therefore prejudiced. Ex parte Flannagan (1897), 2 C. C. C., 513.

A refusal to examine witnesses for the defence and to permit a cross-examination of the witnesses for the prosecution, is a clear mis-carriage of justice, and a clear excess of jurisdiction which invalidates the conviction. R. v. Sproule (1887), 14 O. R. at p. 384.

See also R. v. Holland (1875), 37 U. C. Q. B., 214; R. v. Washington (1881), 46 U. C. Q. B., at p. 233.

Where it is desired on behalf of the defence to show that a magistrate has an interest in the prosecution, the accused is entitled to call the magistrate as a witness; and if the latter refuses to be sworn, and the associate magistrate refuses to use his authority to compel him to be sworn, the defendant is thereby denied the right of making a "full answer and defence." R. v. Sproule (1887), 14 O. R., 375.

But see R. v. Brown (1888), 16 O. R., 375.

Where in summary proceedings it is desired to call the presiding magistrate as a witness, the application should be supported by an affidavit stating not only that the magistrate is a necessary and material witness, and that the application is made in good faith, but disclosing specifically what the party proposes to prove by the magistrate's testimony. Ex parte Hebert (1898), 4 C. C. C., 153.

716. Evidence to be on oath.—Every witness at any hearing shall be examined upon oath or affirmation, by the justice before whom such witness appears for the purpose of being examined.

2. **Commission to take evidence outside of Canada in certain cases.—Proviso.**—A judge of any superior or county court may appoint a commissioner or commissioners to take the evidence upon oath of any person who resides out of Canada and is stated to be able to give material information relating to an offence for which a prosecution is pending under this Part, or relating to any person accused of such offence, in the circumstances and in the manner, *mutatis mutandis*, in which he might do so under section nine hundred and ninety-seven; and all the provisions of the said section, in respect of matters arising thereunder, shall apply *mutatis mutandis* to matters arising under this section: Provided that no such appointment shall be made without the consent of the Attorney General. 55-56 V., c. 29, s. 851; 6 E. VII., c. 5, s. 1.

717. Prosecutor need not prove negative.—If the information or complaint in any case negatives any exemption, exception, proviso or condition in the statute on which the same is founded it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence if he wishes to avail himself of the same. 55-56 V., c. 29, s. 852.

In prosecutions under liquor license laws magistrates have not the right, when the formal existing license is produced, to go behind it for the purpose of enquiring, not into the simple issue "Is the defendant licensed or unlicensed?" but whether certain preliminary requisites have or have not been complied with before the license produced had been given to the tavernkeeper. Where, therefore, a certificate had been granted and a license issued for the sale of spirituous liquors under a by-law which was subsequently quashed, it was held that such quashing did not nullify the license so as to support a conviction for selling liquors without license. R. v. Stafford (1872), 22 U. C. C. P., 177.

Where the defence to a summary prosecution for selling liquor without a license is that the accused was entitled to do so under a statutory exception respecting registered druggists, and by statute the onus is expressly cast on the accused to prove himself within the exception, and provision made for proving the register by the production of a printed copy thereof, the *viva voce* testimony of the accused that he is a duly registered druggist is not competent evidence of the fact, and the magistrate may disregard the same, although no objection was taken to the admission of such testimony. R. v. Herrell (1899), 3 C. C. C., 15.

The existence of an exception nominated in the description of an offence created by statute must be negatived in order to maintain the charge; but if a statute creates an offence in general, with an exception by way of proviso in favor of certain persons or circumstances, the onus is on

the accused to plead and prove himself within the proviso. R. v. Strauss (1897), 5 B. C. R., 486.

There is a manifest distinction between a proviso and an exception. If an exception occurs in the description of the offence in the statute, the exception must be negatived, or the party will not be brought within the description. But if the exception comes by way of proviso, and does not alter the offence, but merely states what persons are to take advantage of it, then the defence must be specially pleaded, or may be given in evidence under the general issue according to circumstances. Simpson v. Ready (1844), 12 M. & W., 736 at p. 739.

718. Non-appearance of accused.—Ex parte hearing.—Warrant to procure attendance of accused.—In case the accused does not appear at the time and place appointed by any summons issued by a justice on information before him of the commission of an offence punishable on summary conviction, then, if it appears to the satisfaction of the justice that the summons was duly served a reasonable time before the time appointed for appearance, such justice may proceed *ex parte* to hear and determine the case in the absence of the defendant, as fully and effectually, to all intents and purposes, as if the defendant had personally appeared in obedience to such summons, or the justice may, if he thinks fit, issue his warrant as provided by sections six hundred and fifty-nine and six hundred and sixty and adjourn the hearing of the complaint or information until the defendant is apprehended. 55-56 V., c. 29, s. 853; 56 V., c. 32, s. 1.

This section authorizing a magistrate to determine the case in the defendant's absence on his default in appearance, must be restricted to the particular charge in the original information and cannot cover a distinct offence. Ex parte Doherty (1895), 1 C. C. C., 84.

Service of a summons to appear before a magistrate to answer a charge of having committed an offence punishable by summary conviction is not validly made although left with the defendant's wife at his usual place of abode, if the defendant was then absent from Canada and remained away until after the hearing. Ex parte Donovan (1894), 3 C. C. C., 286.

Notice of a summons by justices under the Summary Convictions clauses of the Code may be given to a corporation in a manner similar to a notice of indictment under Code sec. 918. R. v. Toronto Railway Co (1898), 2 C. C. C., 471.

The hearing before a justice trying a person for an offence punishable on summary conviction may be adjourned from time to time, although the accused be not present, provided the adjournments are made in the presence and hearing of his solicitor or agent. Proctor v. Parker (1899), 3 C. C. C., 374.

See also Ex parte Woodstock Electric Co. (1898), 4 C. C. C., 107.

719. Non-appearance of prosecutor.—Dismissal or adjournment.—If, upon the day and at the place so appointed, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the justice by

virtue of a warrant, then, if the complainant or informant, having had due notice, does not appear by himself, his counsel, solicitor or agent, the justice shall dismiss the complaint or information unless he thinks proper to adjourn the hearing of the same until some other day upon such terms as he thinks fit. 55-56 V., c. 29, s. 854.

720. Proceedings when both parties appear.—If both parties appear, either personally or by their respective counsel, solicitors or agents, before the justice who is to hear and determine the complaint or information such justice shall proceed to hear and determine the same. 55-56 V., c. 29, s. 855.

The defendant's appearance by counsel upon the return of a magistrate's summons is a waiver of any irregularity in respect of the service not having been effected by a peace officer, although counsel objects on that ground to the hearing being proceeded with. R. v. Doherty (1899), 3 C. C. C., 505.

On the return of a summons in a summary proceeding before justices of the peace, the person summoned must wait a reasonable time after the hour named in the summons, when the justices are at that hour engaged in other official business. R. v. Wipper (1901), 5 C. C. C., 17.

721. Arraignment of accused.—If the defendant is personally present at the hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be.

2. **Conviction or order if charge admitted.**—If the defendant thereupon admits the truth of the information or complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the justice present at the hearing shall convict him or make an order against him accordingly.

3. **If charge not admitted.**—If the defendant does not admit the truth of the information or complaint, the justice shall proceed to inquire into the charge and for the purposes of such inquiry shall take the evidence of witnesses both for the complainant and accused in the manner provided by Part XIV. in the case of a preliminary inquiry.

4. **Evidence in reply.**—The prosecutor or complainant is not entitled to give evidence in reply if the defendant has not adduced any evidence other than as to his general character.

5. **Witness need not sign.**—In a hearing under this Part the witnesses need not sign their depositions. 55-56 V., c. 29, s. 856.

When an accused person is summoned to appear before a justice of the peace having jurisdiction to conduct the proceedings without associate

justices, other justices of the peace are not entitled to interfere in the preliminary enquiry or summary trial, or to be associated with the summoning justice, except at the latter's request. R. v. McRae (1897), 2 C. C. C., 49.

In matters of summary conviction falling under the Criminal Code the depositions must be taken in writing, otherwise the conviction will be quashed. The irregularity is not a mere defect of form and is not cured by sec. 1129. Re Lacroix (1907), 12 C. C. C., 297.

722. Adjournment.—Before or during the hearing of any information or complaint the justice may, in his discretion adjourn the hearing of the same to a certain time or place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective counsel solicitors or agents then present, but no such adjournment shall be for more than eight days.

2. **Hearing at time to which adjourned.**—If, at the time and place to which the hearing or further hearing is adjourned, either or both of the parties do not appear, personally or by his or their counsels, solicitors or agents respectively, before the justice or such other justices as shall then be there, the justice who is then there may proceed to the hearing or further hearing as if the party or parties were present.

3. **Prosecutor not appearing.**—If the prosecutor or complainant does not appear the justice may dismiss the information, with or without costs as to him seems fit.

4. **Defendant may go at large, be committed or put under recognizance.**—Whenever any justice adjourns the hearing of any case he may suffer the defendant to go at large or may commit him to the common gaol or other prison within the territorial division for which such justice is then acting, or to such other safe custody as such justice thinks fit, or may discharge the defendant upon his recognizance, with or without sureties at the discretion of such justice, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned.

5. **In event of non-appearance warrant may issue.**—Whenever any defendant who is discharged upon recognizance, or allowed to go at large, does not appear at the time mentioned in the recognizance or to which the hearing or further hearing is adjourned the justice may issue his warrant for his apprehension. 55-56 V., c. 29, s. 857.

A magistrate exceeds his jurisdiction if he hears one of the parties, and then pronounces sentence on a day to which the cause has not been adjourned in the manner provided by this section. Therrien v. McEachren (1897), R. J. Q., 4 S. C., 87.

When the hearing of a case before a justice is adjourned, the justice

is not bound to commence the trial at the hour to which adjournment was made, but may postpone the hearing until some later time in the day; nor is the justice bound to be at the place of hearing continuously from the hour to which the adjournment was made until the commencement of the hearing. Ex parte Card (1896), 34 N. B. R., 11.

The provision that no adjournment shall be for more than eight days is matter of procedure, and may be waived, and a defendant who consents to an adjournment for more than eight days cannot afterwards complain in that respect. R. v. Hazen (1893), 20 Ont. A. R., 633.

A contrary decision was given in R. v. French (1887), 13 O. R., 80.

But this decision was disapproved in R. v. Hefferman (1887), 13 O. R., 616.

Where a justice, who had reserved judgment at the conclusion of the hearing without adjourning to any named time, subsequently gave judgment without any notice to the accused, although later in the same day he wrote to the solicitors of the accused stating that he had found him guilty, he thereby exceeded his jurisdiction, and the conviction was quashed. R. v. Mitchell (1897), 17 C. L. T., 352.

See also R. v. Hall (1887), 12 Ont. P. R., 142; R. v. Morse (1891), 11 C. L. T., 342.

An adjournment *sine die* of summary proceedings before a magistrate for the purpose of delivering judgment is illegal, and a conviction thereafter made by the magistrate, in the absence of the accused, is void for want of jurisdiction. R. v. Quinn (1897), 2 C. C. C., 153.

The eight days should be computed from and exclusive of the day of the adjournment. Williams v. Burgess (1840), 12 A. & E., 635.

A conviction in the form prescribed by the Criminal Code is not bad because it also contains recitals showing certain adjournments of the hearing before the justice but not showing that no adjournment had been made for a longer period than the eight days allowed by this section, although more than three months had elapsed from the commencement to the end of the proceedings. Proctor v. Parker (1899), 3 C. C. C., 374.

The intent of this section is not to prevent more than one adjournment. Messenger v. Parker (1885), 18 N. S. R., 237 at p. 242.

An adjournment of the hearing of a complaint under the summary convictions clauses cannot be made by the clerk of the court in the absence of the magistrate to a date more than eight days after that when the last adjournment of the case was ordered by the magistrate. Pare v. Recorder of Montreal (1905), 10 C. C. C., 295.

DEFECTS AND OBJECTIONS.

723. Proceedings not objectionable on certain grounds.—No information, complaint, warrant, conviction or other proceeding under this Part shall be deemed objectionable or insufficient on any of the following grounds, that is to say,—

(a) that it does not contain the name of the person injured, or intended or attempted to be injured; or,

(b) that it does not state who is the owner of any property therein mentioned; or,

(c) that it does not specify the means by which the offence was committed; or,

(d) that it does not name or describe with precision any person or thing.

2. **Particulars may be ordered.**—The justice may, if satisfied that it is necessary for a fair trial, order that a particular, further describing such means, person, place or thing, be furnished by the prosecutor.

3. **Description of offence in words of Act.**—The description of any offence in the words of the Act or any order, by-law, regulation or other document creating the offence, or any similar words, shall be sufficient in law. 63-64 V., c. 46 s. 3.

The accused was prosecuted before justices of the peace "for selling intoxicating liquors in a quantity less than two gallons in contravention of the defendant's license." It was held that the omission in the complaint of a description of the license referred to, and of a statement of the quantity actually sold, was at most a mere irregularity which might be cured by amendment in the original court, or might be remedied, if it resulted in failure of justice, in the Superior Court, by means of certiorari, but that it afforded no ground for prohibition to issue. Laliberte v. Fortin (1893), R. J. Q., 2 Q. B., 573.

A person who is charged under a wrong name, and who pleads without objection to same, is not entitled after conviction to be released under a writ of habeas corpus on the ground that she is not the person against whom the commitment was issued. The proper time to take objection to a wrong name under which an accused is charged is before pleading to the charge, at which time the mistake may be corrected by an amendment. Ex parte Corrigan (1899), 2 C. C. C., 591.

See also Champagne v. Simard (1895), R. J. Q., 7 S. C., 40; R. v. Hazen (1893), 20 Ont. A. R., 633; R. v. Alward (1894), 25 O. R., 519.

724. Variance or defect.—No objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint.

2. **Not material, as to time when.**—Any variance between the information for any offence or act punishable on summary conviction and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material if it is proved that such information was, in fact, laid within the time limited by law for laying the same.

3. **Not material, as to place where.**—Any variance between the information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material if the offence or act is proved to have been committed within the jurisdiction of the justice by whom the information is heard and determined.

4. **If misleading, adjournment.**—If any such variance, or any other variance between the information, complaint, summons

or warrant, and the evidence adduced in support thereof, appears to the justice present and acting at the hearing to be such that the defendant has been thereby deceived or misled, the justice may, upon such terms as he thinks fit, adjourn the hearing of the case to some future day. 55-56 V., c. 29, s. 847.

A magistrate hearing a charge for a second offence cannot, in the absence of the defendant or his solicitor, and without notice to them, hear a motion to amend the summons by changing the date of the previous conviction. R. v. Grant (1898), 34 C. L. J., 171.

Leave to amend a clerical error in a sworn complaint may be granted at the hearing, even after the evidence for the prosecution has been concluded. Bell v. Parent (1903), 7 C. C. C., 465.

725. Proceedings not objectionable on certain other grounds.—No information, summons, conviction, order or other proceeding, shall be held to charge two offences, or shall be held to be uncertain on account of its stating the offence to have been committed in different modes, or in respect of one or other of several articles, either conjunctively or disjunctively, for example, in charging an offence under section five hundred and thirty-three it may be alleged that 'the defendant unlawfully did cut, break, root up and otherwise destroy or damage a tree, sapling or shrub'; and it shall not be necessary to define more particularly the nature of the act done, or to state whther such act was done in respect of a tree, or a sapling, or a shrub. 55-56 V., c. 29, s. 907.

A charge of stealing "in or from" a building is for one offence only. R. v. White (1901), 4 C. C. C., 420.

A summary conviction for unlawfully distilling spirits and making or fermenting beer without a revenue license is not void as charging two offences, but is to be held to charge only one offence by virtue of Code sec. 725. R. v. McDonald (1898), 6 C. C. C., 1.

ADJUDICATION.

726. Convict, make order, or dismiss.—The justice, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter, and, unless otherwise provided, determine the same and convict or make an order against the defendant or dismiss the information or complaint, as the case may be. 55-56 V., c. 29, s. 858.

Magistrates have no jurisdiction upon the hearing on an information charging the accused with having committed an indictable offence, to summarily convict him of a lesser offence with which he is not charged. R. v. Mines (1894), 25 O. R., 577.

See also R. v. Timson (1870), L. R., 5 Ex., 257.

If a city recorder refuses to pronounce judgment in a case which has been heard before him and in which he has not in law any discretion about

suspending judgment, he can be compelled to do so by mandamus. Fournier v. DeMontigny (1896), R. J. Q., 2 S. C., 495.

See also Lacerte v. Pepin (1896), R. J. Q., 10 S. C., 542.

An adjournment *sine die* of summary proceedings before a magistrate for the purpose of delivering judgment is illegal, and a conviction thereafter made by the magistrate, in the absence of the accused, is void for want of jurisdiction. R. v. Quinn (1897), 2 C. C. C., 153.

Where evidence on a preliminary enquiry is commenced before one justice of the peace and finished before two justices, a committal by the two is irregular unless both have heard all the evidence. Re Munn (1899), 2 C. C. C., 429.

See also Re Guerin (1888), 16 Cox C. C., 596.

After the evidence has been heard in summary proceedings the justice is not bound either to convict or discharge the defendant; he may allow the prosecutor to withdraw the charge. Ex parte Wyman (1899), 5 C. C. C., 58.

727. Memo. of conviction or order.—Forms.—If the justice convicts or makes an order against the defendant, a minute or memorandum thereof may then be made, for which no fee shall be paid, and the conviction or order in such case, shall afterwards be drawn up by the justice on parchment or on paper, under his hand and seal, in such one of the forms of conviction or of orders from 31 to 36 inclusive as is applicable to the case, or to the like effect. 55-56 V., c. 29, s. 859.

The precept of a warrant of commitment must conform strictly to the directions of the statute which authorizes imprisonment, with respect to the conditions upon which a prisoner can obtain his discharge before the expiration of the term to which he has been condemned. When the statement in question states that a person who is condemned to a term of imprisonment in default of the payment of a fine and costs, can obtain his discharge before the expiration of such term upon the payment of the fine, it is illegal to require in addition the payment of the costs of the prosecution and charges of his conveyance to prison. In such case the warrant of commitment is bad and illegal, not only as regards the part in which such costs and charges are mentioned, but in whole, and must be quashed. Ex parte Lou Kai Long alias Long Wing (1897), R. J. Q., 6 Q. B., 301.

See also Prevost v. Leclerc (1898), 1 Quebec P. R., 230.

A summary conviction by a magistrate in respect of a charge in which he has jurisdiction only upon the consent of the accused to a summary trial, is not invalid merely because it omits to state that the accused so consented if in fact the consent was given. R. v. Burtress (1900), 3 C. C. C., 536.

See also R. v. Crowell (1897), 2 C. C. C., 34.

Upon an application for the discharge from custody of the accused, upon the ground that no offence was disclosed by the warrant of commitment, which simply stated that the accused "did steal a certain wagon, etc., without alleging the absence of colour of right, and without laying in any person the property in the wagon, it was held that the warrant contained a sufficiently definite statement of the alleged crime. R. v. Leet (1900),, 20 L. C. T., 46.

A conviction in due form will not be quashed because it is founded upon a minute of adjudication which does not disclose an offence in law,

if the court is satisfied upon perusal of the depositions that the offence for which the formal conviction was made was in fact committed. R. v. Whiffin (1900), 4 C. C. C., 141.

728. Disposal of penalties when joint offenders.—When several persons join in the commission of the same offence, and upon conviction thereof each is adjudged to pay a penalty which includes the value of the property or the amount of the injury done, no further sum shall be paid to the person aggrieved than such amount or value and costs, if any, and the residue of the penalties imposed shall be applied in the same manner as other penalties imposed by a justice are directed to be applied. 55-56 V., c. 29, s. 860.

729. First conviction in certain cases.—Discharge on payment of damages and costs.—Whenever any person is summarily convicted before a justice of any offence against Part VI., or Part VII., except section four hundred and nine and sections four hundred and sixty-six to five hundred and eight inclusive, or against Part VIII., except sections five hundred and forty-two to five hundred and forty-five inclusive, and it is a first conviction, the justice may, if he thinks fit, discharge the offender from his conviction upon his making such satisfaction to the person aggrieved, for damages and costs, or either of them, as are ascertained by the justice. 55-56 V., c. 29, s. 861.

730. Order of dismissal.—Certificate of dismissal.—Form.—If the justice dismisses the information or complaint, he may, when required so to do, make an order of dismissal in form 37, and he shall give the defendant a certificate in form 38 which, upon being afterwards produced, shall, without further proof, be a bar to any subsequent information or complaint for the same matter against the same defendant. 55-56 V., c. 29, s. 862.

It has been decided in England, under a somewhat similar statute, that when a person accused of any charge has been summarily tried by a magistrate or justice, and the charge has been dismissed, the person so accused is entitled *ex debito justitiae*, to a certificate of disminal. Hancock v. Somes (1859), 1 E. & E., 795; Costar v. Hetherington (1859) 1, E. & E., 802.

But the certificate should only be given when the case has been fully heard on its merits; if it is granted in a case in which the charge has been withdrawn before the hearing it will not be a bar to later proceedings on account of the same offence. Reed v. Nutt (1890), L. R., 24 Q. B. D., 669.

731. Minute of order to be served.—Whenever, by any Act or law, authority is given to commit a person to prison, or to

levy any sum upon his goods or chattels by distress, for not obeying an order of a justice, the defendant shall be served with a copy of the minute of the order before any warrant of commitment or of distress is issued in that behalf.

2. **No part of warrant.**—The order or minute shall not form any part of the warrant of commitment or of distress. 55-56 V., c. 29, s. 863.

A warrant of commitment is bad if it simply directs the gaoler to "imprison" the defendant for the stated time, without specifying the place of imprisonment.

The description of the place of imprisonment in a warrant of commitment is sufficient if the prison be described by its situation or some other definite description. Re King (1901), 4 C. C. C., 426.

See also R. v. Doherty (1899), 3 C. C. C., 505.

732. Assault.—Whenever any person is charged with common assault any justice may summarily hear and determine the charge.

2. **Duty when more than common assault.**—If the justice finds the assault complained of to have been accompanied by an attempt to commit some other indictable offence, or is of opinion that the same is, from any other circumstance, a fit subject for prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if he had no authority finally to hear and determine the same. 63-64 V., c. 46, s. 3.

Code sec. 1142, limiting the time within which an information can be laid in the case of any offence punishable on summary conviction, applies only to proceedings under the summary conviction clauses of the Code.

An information may be laid and proceedings taken thereon for the prosecution by indictment of an indictable offence, although the case is one which might have been summarily tried by a justice had the information been laid within the six months' limit provided by Code sec. 1142, and although that period had expired before the laying of the information.

An indictment for rape includes the lesser charge of assault, and a verdict thereon of guilty of common assault is properly followed by a conviction although the information was laid more than six months after the offence was committed. R. v. Edwards (1898), 2 C. C. C., 96.

No action of damages for assault lies in favour of the party aggrieved against an assault who has been convicted under this section and who has paid the amount of the fine. Larin v. Boyd (1904), 11 C. C. C., 74.

733. Dismissal of complaint for assault.—If the justice, upon the hearing of any case of assault or battery upon the merits where the information is laid by or on behalf of the person aggrieved, under the last preceding section, deems the offence not to be proved, or finds the assault or battery to have been justified, or so trifling as not to merit any punishment, he shall

dismiss the complaint and shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the person against whom the complaint was preferred. 55-56 V., c. 29, s. 865.

✓ **734. Release from further proceedings.**—If the person against whom any such information has been laid, by or on behalf of the person aggrieved, obtains such certificate, or, having been convicted, pays the whole amount adjudged to be paid or suffers the imprisonment, or imprisonment with hard labour, awarded, he shall be releasd from all further or other proceedings, civil or criminal, for the same cause. 55-56 V., c. 29, s. 866.

The question having been raised, it was held in an Ontario case that sections 733 and 734 are *intra vires* of the Federal Parliament. Flick v. Brisbin (1895), 26 O. R., 423.

In an English case it was held that where an accused person was summarily convicted, but was neither fined nor imprisoned, such summary conviction was nevertheless a bar to any subsequent proceedings for the same offence by way of indictment. R. v. Miles (1890), L. R., 24 Q. B. D., 423.

Where a person who was sued for damages for an assault pleaded a prior conviction for the same offence, and payment of the fine imposed by such conviction, it was held that such plea was bad, because it did not show that the earlier conviction was a result of a complaint made by or on behalf of the plaintiff in the civil proceeding. Ross v. McQuarrie 1894), 26 N. S. R., 504.

The mere fact that a person has been convicted and condemned to pay a fine is not a bar to subsequent civil proceedings for the same offence for which the conviction was made, it must also be shewn that the fine was paid. Abinovitch v. Legault (1895), R. J. Q., 8 S. C., 525.

This section does not apply to bar a civil action for assault, after conviction and payment of the fine, where such conviction is by a jury on a trial upon an indictment. Clermont v. Lagacé (1897), 2 C. C. C., 1.

In the Province of Quebec it has been held that a person who, on the complaint of the person said to have been assaulted, has been arrested and summarily convicted, and has paid the whole amount of the fine imposed on him, is not liable to a civil action for damages for the same assault. Hardigan v. Graham (1897), 1 C. C. C., 137.

But in Ontario, on the contrary, it has been held that a summary conviction for assault occasioning bodily harm, and the payment of the fine imposed, do not constitute a bar to a civil action for damages for the assault. Nevills v. Ballard (1897), 1 C. C. C., 434.

On a charge of shooting and wounding with intent, the justices holding a preliminary inquiry cannot, of their own motion, vary or reduce the charge to one of common assault and so acquire jurisdiction to adjudicate thereupon.

A certificate of conviction by justices for common assault under those circumstances, and the payment of the fine imposed, do not bar a civil action by the injured party for damages against the wrong-doer. Miller v. Lea (1898), 2 C. C. C., 282.

A conviction by a justice for an aggravated assault and the payment by the defendant of the fine imposed, does not form a bar to a civil pro-

ceeding for the recovery of damages for the same offence. Grantillo v. Caporici (1899), R. J. Q., 16 S. C., 44.
See also Peltier v. Martin, R. J. Q., 12 S. C., 438.

735. Costs on conviction or order.—In every case of a summary conviction, or of an order made by a justice, such justice may, in his discretion, award and order in and by the conviction or order that the defendant shall pay to the prosecutor or complainant such costs as to the said justice seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before justices. 55-56 V., c. 29, s. 867.

The award of costs under a summary conviction should direct payment thereof to the informant and not to the justice. R. v. Roche (1900), 4 C. C. C., 64.

736. Costs on dismissal.—Whenever the justice, instead of convicting or making an order, dismisses the information or complaint, he may, in his discretion, in and by his order or dismissal, award and order that the prosecutor or complainant shall, pay to the defendant such costs as to the said justice seem reasonable and consistent with law. 55-56 V., c. 29, s. 868.

737. Recovery of costs with penalty.—The sums so allowed for costs shall, in all cases, be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same warrants as any penalty, adjudged to be paid by the conviction or order, is to be recovered. 55-56 V., c. 29, s. 869.

The word "penalty" in Code secs. 737 and 738 is restricted to a pecuniary penalty because of its association with the terms "paid" and "recovered." R. v. Johnston (1906), 11 C. C. C., 6.

738. Recovery of costs only.—Whenever there is no such penalty to be recovered such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress, by imprisonment, with or without hard labour, for any term not exceeding one month. 55-56 V., c. 29, s. 870.

See note to preceding section.

739. Conviction or order involving payment of money. —Justice may adjudge.—Whenever a conviction adjudges a pecuniary penalty or compensation to be paid, or an order requires the payment of a sum of money, whether the Act or law authorizing such conviction or order does or does not provide a mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment thereof, the justice by his

conviction, or order after adjudging payment of such penalty, compensation or sum of money, with or without costs, may order and adjudge,—

(a) **Distress and imprisonment in default.**—That in default of payment thereof forthwith, or within a limited time, such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, shall be levied by distress and sale of the goods and chattels of the defendant, and, if sufficient distress cannot be found, that the defendant be imprisoned in the manner and for the time directed by the Act or law authorizing such conviction or order or by this Act, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, and the costs and charges of the distress and of the commitment and of the conveying of the defendant to gaol are sooner paid; or,

(b) **Imprisonment in the first instance in default.**—That in default of payment of the said penalty, compensation or sum of money, and costs, if any, forthwith or within a limited time, the defendant be imprisoned in the manner and for the time mentioned in the said Act or law, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless the same and the costs and charges of the distress and of the commitment and of the conveying of the defendant to gaol are sooner paid.

2. **Hard labour.**—Whenever under such Act or law, imprisonment with hard labour may be ordered or adjudged in the first instance as part of the punishment for the offence of the defendant, the imprisonment in default of distress or of payment may be with hard labour. 55-56 V., c. 29, s. 872; 57-58 V., c. 57, s. 1; 63-64 V., c. 46, s. 3.

Prohibition will not lie to restrain the issue and enforcement of a distress warrant by a justice of the peace upon a conviction regular on its face, and which was within the jurisdiction of the justice making it, such acts being ministerial, not judicial. R. v. Coursey (1895), 27 O. R., 181.

The word "penalty," although generally applied to pecuniary punishment, as by fine, includes also punishment by imprisonment.

A conviction awarding ninety days' imprisonment as an alternative punishment on non-payment of a fine where the statute authorized three months' imprisonment is bad, as ninety days may possibly be more than three months. R. v. Gavin (1897), 1 C. C. C., 59.

Upon conviction and fine for keeping a bawdy-house the powers of a magistrate for enforcing payment of the fine are limited to directing imprisonment for a period not exceeding three months under this section,

although he might impose imprisonment for six months in the first instance instead of a fine. R. v. Stafford (1898), 1 C. C. C., 239.

See also R. v. Cyr (1887), 12 Ont. P. R., 24; R. v. Perry (1898), 35 C. L. J., 174.

A conviction under the Canada Temperance Act may by virtue of Code sec. 739 (b) direct imprisonment in default of payment of the fine and costs, without any award of a distress upon the defendant's goods. Ex parte Casson (1897), 2 C. C. C., 483.

This section does not authorize an award of imprisonment *with hard labor* in default of payment of the fine, unless the Act or law under which the conviction is had provides the same in respect of the non-payment of the penalty, and this notwithstanding such Act or law authorizes a punishment in the first instance by imprisonment with hard labor. R. v. Horton (1897), 3 C. C. C., 84.

(This decision would not hold good since the amendment of 1900).

See also R. v. McCann (1896), 3 C. C. C., 110.

A summary conviction by a justice of the peace, whereby a fine is sought to be imposed, must adjudge forfeiture of the amount as well as payment thereof.

The prisoner is entitled to be discharged under habeas corpus if the conviction merely adjudges that he "forthwith pay" a sum named, and in default of payment be imprisoned. R. v. Crowell (1897), 2 C. C. C., 34.

A warrant of commitment by justices in default of payment of a fine imposed under the Customs Act for smuggling, and under which the accused is required to pay also the expenses of being conveyed to gaol before he can obtain his liberty is invalid if the amount of such expenses are not stated therein. R. v. McDonald (1898), 2 C. C. C., 504.

If the justice making a summary conviction adjudges a pecuniary penalty and a distress to realize same, and in default of sufficient distress that the defendant be imprisoned, the costs of the distress and of conveying the defendant to gaol are not in the discretion of the justice, but must be included in the formal conviction.

The omission of that provision from the formal conviction in such a case invalidates the conviction. R. v. Vantassel (1894), 5 C. C. C., 133.

It is unnecessary for the justice to insert in the minute of conviction any provision that the defendant shall pay such costs of distress and conveying to gaol, as a pre-requisite to his discharge from custody before the end of the term of imprisonment.

The formal conviction may provide under this section for the payment of the costs both of the distress and of conveying to gaol, although the minute of conviction does not include the costs of distress but merely directs imprisonment unless the penalty and costs and the costs of conveying to gaol are sooner paid. R. v. Vantassel (1894), 5 C. C. C., 128.

A warrant of commitment for want of distress upon a summary conviction is invalid and will be quashed, if it recites only default in payment of the fine, and does not shew on its face either a return of the distress warrant and that no sufficient distress was found or that a distress was dispensed with under Code sec., 744 upon an adjudication thereunder. R. v. Skinner (1905), 9 C. C. C., 558.

The provision of the Canada Temperance Act, which fixes the penalty at "not less than $50 or imprisonment for a term not exceeding one month" applies to so limit the term of imprisonment only when imposed as a punishment in the first instance, and not when imposed for default of payment of the penalty.

Where a fine is imposed in the first instance, the punishment in default of payment may be for any term not exceeding three months under this section. R. v. Blank (1905), 10 C. C. C., 358.

A warrant of commitment under Code sec. 739 (b) in default of pay-

ing a fine is bad unless it includes the expenses of conveying the defendant to gaol. R. v. Gow (1906), 11 C. C. C., 81.

The inclusion in a justice's warrant of commitment issued in default of payment of fine and costs, of unauthorized costs, i. e., costs of commitment in addition to costs of conveying to goal, is a ground for discharge upon habeas corpus. R. v. Townsend (1906), 11 C. C. C., 153.

Code sec. 739 (2) authorizes the imposition of hard labour upon an imprisonment in default of distress, only where imprisonment with hard labour in the first instance might have been imposed in addition to a fine with imprisonment in default of distress or payment. R. v. Clark (1906), 12 C. C. C., 17.

Upon tender at a reasonable hour to the gaoler of the sum due under a warrant of commitment in default of payment of a fine, the prisoner is entitled to be released.

In the absence of statutory prison regulations on the subject, the gaoler is not justified in refusing a tender of the fine and costs made between seven and eight o'clock in the evening after his office hours. R. v. Colahan (1907), 12 C. C. C., 283.

740. Imprisonment when ordered in addition to fine.—Where, by virtue of an Act or law so authorizing, the justice by his conviction adjudges against the defendant payment of a penalty or compensation, and also imprisonment, as punishment for an offence, he may, if he thinks fit, order that the imprisonment in default of distress or of payment, shall commence at the expiration of the imprisonment awarded as a punishment for the offence.

2. **This and last section construed as if in special Act.**—The like proceeding may be had upon any conviction or order made in accordance with this or the last preceding section as if the Act or law authorizing the conviction or order had expressly provided for a conviction or order in the terms permitted by this or the last preceding section. 55-56 V., c. 29, s. 872.

See note to preceding section.

ENFORCING ADJUDICATION.

741. Distress warrant.—The justice making the conviction or order mentioned in paragraph (a) of section seven hundred and thirty-nine may issue a warrant of distress in form 39 or 40, as the case requires, and in the case of a conviction or order under paragraph (b) of the said section, a warrant in one of the forms 41 or 42 may issue.

2. **Warrant of commitment.**—If a warrant of distress is issued and the constable or peace officer charged with the execution thereof returns (form 43) that he can find no goods or chattels whereon to levy thereunder, the justice may issue a warrant of commitment in form 44. 55-56 V., c. 29, s. 872.

See note to section 739.

742. Distress and commitment for costs.—When any information or complaint is dismissed with costs the justice may issue a warrant of distress on the goods and chattels of the prosecutor or complainant, in form 45, for the amount of such costs; and, in default of distress, a warrant of commitment in form 46 may issue.

2. **Term.**—The term of imprisonment in such case shall not exceed one month. 55-56 V., c. 29, s. 873.

See R. v. Woodyatt (1895), 27 O. R., 113.

743. Endorsement of warrant for distress.—If, after delivery of any warrant of distress issued under this Part to the constable or constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the justice granting the warrant, then upon proof being made upon oath or affirmation of the handwriting of the justice granting the warrant, before any justice of any other territorial division, such justice shall thereupon make an endorsement on the warrant, signed with his hand, authorizing the execution of the warrant within the limits of his jurisdiction, by virtue of which warrant and endorsement the penalty or sum and costs, or so much thereof as has not been before levied or paid, shall be levied by the person bringing the warrant, or by the person or persons to whom the warrant was originally directed, or by any constable or other peace officer of the last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein.

2. **Form.**—Such endorsement shall be in form 47. 55-56 V., c. 29, s. 874.

744. When distress would be ruinous to defendant or family.—Whenever it appears to any justice that the issuing of a distress warrant would be ruinous to the defendant and his family, or whenever it appears to the justice, by the confession of the defendant or otherwise, that he has no goods and chattels whereon to levy such distress, then the justice, if he deems fit, instead of issuing a warrant of distress, may commit the defendant to the common gaol or other prison in the territorial division, there to be imprisoned, with or without hard labour, for the time and in the manner he would have been committed in case such warrant of distress had issued and no sufficient distress had been found. 55-56 V., c. 29, s. 875.

Under a warrant of distress upon a conviction for an offence against the second part of the Canada Temperance Act, the defendant's property

must be levied on, though it consists of intoxicating liquors only, and is in a place where the second part of the Act is in force. Ex parte Fitzpatrick (1893), 5 C. C. C., 191.

A warrant of commitment for want of distress upon a summary conviction is invalid and will be quashed, if it recites only default in payment of the fine, and does not shew on its face either a return of the distress warrant and that no sufficient distress was found or that a distress was dispensed with under Code sec. 744 upon an adjudication thereunder. R. v. Skinner (1905), 9 C. C. C., 558.

745. Proceedings pending execution of distress warrant —Whenever a justice issues a warrant of distress as hereinbefore provided, he may suffer the defendant to go at large, or verbally, or by a written warrant in that behalf, may order the defendant to be kept and detained in safe custody, until return has been made to the warrant of distress, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of the justice, for his appearance, at the time and place appointed for the return of the warrant of distress, before him or before such other justice for the same territorial division as shall then be there. 55-56 V., c. 29, s. 876.

746. Commitment when party in prison.—Whenever a justice, upon any information or complaint, adjudges the defendant to be imprisoned, and the defendant is then in prison undergoing imprisonment upon conviction for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other officer to whom it is directed.

2. **Cumulative punishment.**—The justice who issued the same, if he thinks fit, may award and order therein that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant was previously sentenced. 55-56 V., c. 29, s. 877.

See ex parte McManus (1894), 32 N. B. R., 481; R. v. Doherty (1896), 32 C. L. J., 595.

747. Tender or payment in distress warrant.—Whenever a warrant of distress has issued against any person, and such person pays or tenders to the peace officer having the execution of the same, the sum or sums in the warrant mentioned, together with the amount of the costs and charges of the distress up to the time of payment or tender, the peace officer shall cease to execute the same.

2. **Payment when party in prison to keeper.**—Whenever any person is imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the warrant of

commitment mentioned, together with the amount of the costs and charges therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he is in his custody for no other matter.

3. **By him to justice.**—Such keeper shall forthwith pay over any moneys so received by him to the justice who issued the warrant. 55-56 V., c. 29, s. 901.

SURETIES TO KEEP THE PEACE.

748. Recognizance to keep the peace.—Whenever any person is charged before a justice with any offence triable under this Part which, in the opinion of such justice, is directly against the peace, and the justice after hearing the case is satisfied of the guilt of the accused, and that the offence was committed under circumstances which render it probable that the person convicted will be again guilty of the same or some other offence against the peace unless he is bound over to good behaviour, such justice may, in addition to, or in lieu of, any other sentence which may be imposed upon the accused, require him forthwith to enter into his own recognizance, or to give security to keep the peace and be of good behaviour for any term not exceeding twelve months.

2. **In case of complaint if threats made.**—Upon complaint by or on behalf of any person that on account of threats made by some other person or on any other account, he, the complainant, is afraid that such other person will do him, his wife or child some personal injury, or will burn or set fire to his property, the justice before whom such complaint is made, may, if he is satisfied that the complainant has reasonable grounds for his fears, require such other person to enter into his own recognizance, or to give security, to keep the peace, and to be of good behaviour, for a term not exceeding twelve months.

3. **Procedure.**—The provisions of this Part shall apply, so far as the same are applicable, to proceedings under this section, and the complainant and defendant and witnesses may be called and examined, and cross-examined, and the complainant and defendant shall be subject to costs as in the case of any other complaint.

4. **Imprisonment in default of sureties.**—If any person so required to enter into his own recognizance or give security as aforesaid, refuses or neglects so to do, the same or any other justice may order him to be imprisoned for any term not exceeding twelve months.

5. **Forms.**—The forms 48, 49 and 50, with such variations

and additions as the circumstances may require, may be used in proceedings under this section. 55-56 V., c. 29, s. 959; 56 V., c. 32, s. 1.

Threats verbally made to burn the complainant's buildings are not indictable under the Criminal Code, and give rise only to proceedings to force the offender to give security to keep the peace. Ex parte Welsh (1898), 2 C. C. C., 35.

A warrant of commitment by a justice under Code sec. 748, for default in finding sureties to keep the peace must shew on its face that the complainant feared bodily injury because of the defendant's threat, and that the complaint was not made nor sureties required by the complainant from any malice or ill-will, but merely for the preservation of his person from injury. R. v. McDonald (1897), 2 C. C. C., 64.

The justice of the peace must fix the amount of the recognizance to be given.

A justice's order that the accused give security to keep the peace for one year, but not fixing any amount nor a term of imprisonment in default, will not support a commitment thereunder.

A warrant of commitment under this section can only be issued after the defendant's refusal or neglect to furnish the required security, proved and recorded subsequently to the order requiring the security, and it must recite such refusal or neglect. Re John Doe (1893), 3 C. C. C., 370.

See also Re Sarah Smith's Bail (1903), 6 C. C. C., 416; R. v. Doyle (1906), 12 C. C. C., 69.

APPEAL.

749. Unless otherwise provided in special Act.—Unless it is otherwise provided in any special Act under which a conviction takes place or an order is made by a justice for the payment of money or dismissing an information or complaint, any person who thinks himself aggrieved by any such conviction or order or dismissal, the prosecutor or complainant, as well as the defendant, may appeal,—

(a) **Ontario.**—In the province of Ontario, when the conviction adjudges imprisonment only, to the Court of General Sessions of the Peace; and in all other cases to the Division Court of the division of the county in which the cause of the information or complaint arose;

(b) **Quebec.**—In the province of Quebec, to the Court of King's Bench, Crown side;

(c) **Nova Scotia, New Brunswick, Manitoba.**—In the provinces of Nova Scotia, New Brunswick and Manitoba, to the county court of the district or county where the cause of the information or complaint arose;

(d) **British Columbia.**—In the province of British Columbia, to the county court, at the sitting thereof which shall be held nearest to the place where the cause of the information or complaint arose;

(e) **P. E. Island.**—In the province of Prince Edward Island, to the Supreme Court;

(f) **Saskatchewan and Alberta.**—In the province of Saskatchewan or the province of Alberta, to the district court, at the sittings thereof which shall be held nearest to the place where the cause of the information or complaint arose;

(g) **Northwest.**—In the Northwest Territories, to a stipendiary magistrate; and,

(h) **Yukon.**—In the Yukon Territory, to a judge of the Territorial Court.

2. **Nipissing.**—In the district of Nipissing such person may appeal to the Court of General Sessions of the Peace for the county of Renfrew, when the conviction adjudges imprisonment only, and in all other cases to the Division Court of the county of Renfrew held nearest to the place where the cause of the information or complaint arose.

3. **Saskatchewan, Alberta, Northwest and Yukon, no jury.**—In the case of the provinces of Saskatchewan and Alberta, and of the Northwest Territories and the Yukon Territory, the judge or stipendiary magistrate hearing any such appeal shall sit without a jury at the place where the cause of the information or complaint arose, or at the nearest place thereto where a court is appointed to be held. 55-56 V., c. 29, s. 879; 4-5 E. VII., c. 3, s. 16; c. 10, ss. 1 and 2; c. 27, s. 8; c. 42, s. 16.

The appeal from a summary conviction under the Seaman's Act of Canada for harboring and secreting a deserting seaman is under section (749 and not under section 1013 of the Criminal Code, and in the Province of Quebec the appeal should be taken to the Crown Side and not to the Appeal Side of the Court of King's Bench of that province. R. v. O'Dea (1900), 3 C. C. C., 402.

An appeal under this section from a summary conviction in the Province of Quebec to the Court of King's Bench of that province can only be taken where the offence charged is one within the legislative authority of the Parliament of Canada, and not where the offence is against a provincial statute. Lecours v. Hurtubise (1899), 2 C. C. C., 521.

If an action is brought before the Justice of the Peace by an agent of a society, the appeal from the judgment dismissing the action should be taken by this agent himself, and not by the society which he represents. Canadian Society for the Prevention of Cruelty to Animals v. Lauzon (1899), 5 Rev. de Jurisp., 259.

Where there is a right of appeal from a summary conviction, and it appears upon an application for a certiorari to bring up the conviction to be quashed that the ground alleged therefor is more properly the subject of an appeal, the discretion of the Court should be exercised by refusing the certiorari. R. v. Herrell (1899), 3 C. C. C., 15.

No appeal lies from the decision of the Recorder's Court of Montreal holding a summary trial under Code sec. 773. R. v. Portugais (1901), 5 C. C. C., 100.

See also R. v. Racine (1900), 3 C. C. C., 446; R. v. Bougie (1899), 3 C. C. C., 487.

Where an appeal has been taken to a county court under this section from a summary conviction and the county court has affirmed the conviction, it is not open to the accused to afterwards have the convicting magistrate refer a "stated case" to a superior court. R. v. Townshend (1902), 6 C. C. C., 519.

A person who has been convicted under the Summary Convictions Part of the Criminal Code upon his plea of guilty may notwithstanding such plea enter an appeal under this section.

The plea of guilty concludes the accused only as to the fact that he did what is charged in the information, and he may still appeal upon the ground that the conviction is bad in law or upon an objection to the information or summons taken before the magistrate and overruled by him. R. v. Brook (1902), 7 C. C. C., 216.

750. Procedure.—Unless it is otherwise provided in the special Act,—

(a) if a conviction or order is made more than fourteen days before the sittings of the court to which an appeal is given, such appeal shall be made to the next sittings of such court; but if the conviction or order is made within fourteen days of the sittings of such court, then to the second sittings next after such conviction or order;

(b) **Notice of intention.**—The appellant shall give notice of his intention to appeal by filing in the office of the clerk of the court appealed to, and serving the respondent with a copy thereof, a notice in writing setting forth with reasonable certainty the conviction appealed against and the court appealed to, within ten days after the conviction complained of, and shall, at least five days before the hearing of such appeal, serve upon the respondent or his solicitor a notice setting forth the grounds of such appeal;

(c) **Appellant remains in custody or gives recognizance.**—The appellant, if the appeal is from a conviction adjudging imprisonment, shall either remain in custody until the holding of the court to which the appeal is given, or shall enter into a recognizance in form 51 with two sufficient sureties, before a county judge, clerk of the peace, or justice of the peace for the county in which such conviction has been made, conditioned personally to appear at the said court, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as are awarded by the court; and upon such recognizance being given, the justice before whom such recognizance is entered into, shall liberate such person, if in custody;

(d) **Recognizance to value of property when.**—In case of an appeal from the order of a justice, pursuant to section six hundred and thirty-seven, for the restoration of gold or gold-bearing quartz, or silver or silver ore, the appellant shall give security by recognizance to the value of the said property to

prosecute his appeal at the next sittings of the court and to pay such costs as are awarded against him. 55-56 V., c. 29, s. 880; 4-5 E. VII., c. 10, ss. 3 and 4.

An appeal from a summary conviction to the General Sessions in a criminal case does not abate by the death of the informant. R. v. Fitzgerald (1898), 1 C. C. C., 420.

The magistrate's finding in a summary conviction upon a question of fact within his jurisdiction will not be reviewed upon certiorari, and the same can be attacked only by way of appeal from the conviction. R. v. Urquhart (1899), 4 C. C. C., 256.

It is necessary to serve the convicting magistrate with notice of the application for a certiorari, because he is exposed to an action if the conviction should be quashed; the convicting magistrate must be notified, although the conviction has been confirmed on appeal to the Quarter Sessions to remove the conviction from which the certiorari is sought, and the presiding justices of the Sessions as well as the complainant have been served. R. v. Peterman (1864), 23 U. C. Q. B., 516.

It is not safe for the magistrates to assume, or for the court to require them to assume the responsibility of determining whether or not the appeal was in time; to adjudicate upon a question as to their own default, and to refuse to transmit the papers. The safe way is for the magistrate, upon the recognizance being furnished, to transmit the papers leaving the judge to determine whether any delay which may have arisen is attributable to them or to the appellant. R. v. Slaven (1876), 38 U. C. Q. B., 557.

If as a matter of fact the notice of appeal had not been given in time, or the recognizance entered into, or other matter required to be done before the appellant could proceed with his appeal, the objection could probably be taken at any time, for it would shew that the court had no jurisdiction to try the appeal. R. v. Crouch, 35 U. C. Q. B., 433, at p. 439.

After the Court is opened for the hearing of the appeal, it is then too late for the appellant to file his recognizance. Bestwick v. Bell (1889), 1 T. L. R., 193.

A notice of appeal from a summary conviction, neither addressed to nor served upon the prosecutor, but addressed to and served upon one only of two convicting justices of the peace, is insufficient, though it appears that when the notice was so served the justice upon whom it was served was verbally informed that it was for the prosecutor. Hostetter v. Thomas (1899), 5 C. C. C., 10.

A notice of appeal from a summary conviction is invalid if not addressed to any person. Cragg v. Lamarsh (1898), 4 C. C. C., 246.

A notice of appeal from a summary conviction must state the name of the appellant, the intent to appeal, the nature of the conviction appealed against, and the sittings of the Court at which the appeal will be brought on.

A notice of appeal purporting to be from a conviction for "looking on" while another person was playing in a common gaming house is not a good notice of appeal from a conviction for "playing" in a common gaming house. R. v. Ah Yin (1902), 6 C. C. C., 63.

A notice of appeal under this section from a summary conviction is sufficient if addressed to and served upon the magistrate or justices without being also addressed to the prosecutor. R. v. Davitt (1904), 7 C. C. C., 514.

A notice of appeal from a summary conviction is invalid if it shows merely to what judge and at what place the appeal is to be made, and does not state that the appeal will be made at the next sittings, nor

otherwise define the time of hearing. R. v. Brimacombe (1905), 10 C. C. C., 168.

A notice of appeal from a summary conviction is not invalid because of the want of signature. Although signature is indicated by the Code form, an unsigned notice of appeal otherwise valid in form is a "form to the like effect" and is validated by Code sec. 1152.

A notice of appeal wholly typewritten is a "notice in writing" under this section. R. v. Bryson (1905), 10 C. C. C., 398.

Five clear days' notice of the grounds of appeal from a summary conviction is essential under Code sec. 750 (b), neither the date of service nor the date of hearing being counted. R. v. The Doliver Mountain Mining & Milling Co. (1906), 10 C. C. C., 405.

Upon an appeal from a summary conviction the reasons of appeal must be served five clear days before the hearing. If the reasons of appeal are served too late under this section, the appeal is not lodged in due form and should be dismissed on a preliminary objection. R. v. Thornton (1906), 11 C. C. C., 71.

The words "sittings of the court" in parag. (a) of Code sec. 750, refers to the opening of the term of the court as fixed by law and not to a sitting on a date to which an adjournment had been ordered during such regular session; and an appeal is not late when not taken to the adjourned sittings first following the delay of fourteen days. R. v. Bombardier (1905), 11 C. C. C., 216.

A notice of appeal from a summary conviction cannot be served substitutionally on the respondent by mailing it to his last known address or leaving it at his last known place of abode. Olson v. Cameron (1907), 12 C. C. C., 193.

It is not necessary that the recognizance on an appeal from a summary conviction should be accompanied by affidavits of justification by the sureties, the sufficiency of the sureties being a matter entirely for the justice before whom the recognizance is given. Cragg v. Lamarsh (1898), 4 C. C. C., 246.

On an appeal by several defendants from a summary conviction, the recognizance must be that of two sureties besides the appellants, and the appeal will be quashed if the recognizance is given with only one surety.

An appeal not being a common law right, the conditions precedent prescribed by statute must be strictly complied with. The giving of security is an essential part of the appeal and unless it is done in the manner required by statute, the giving of a notice of appeal will be unavailing and the conviction may be prosecuted as if no notice had been given. R. v. Joseph (1900), 4 C. C. C., 126; 6 C. C. C., 144.

Where on an appeal from a summary conviction the appellant does not make the deposit in lieu of recognizance until after the sittings of the appellate court at which he should have brought the appeal on for hearing, and for which notice was given, the appeal cannot be heard. McShadden v. Lachance (1901), 5 C. C. C., 43.

The giving of a recognizance on an appeal from a summary conviction, operates as a stay of proceedings for the enforcement of any pecuniary penalty imposed by the conviction appealed from. Simington v. Colbourne (1900), 4 C. C. C., 367.

A defendant fined in a summary conviction proceeding who thereupon pays the fine to the clerk of the court instead of giving a recognizance or applying to the justice to fix the deposit on appeal, loses his right of appeal under Code secs. 749, 750 and 751, notwithstanding that the magistrate afterwards fixed the amount of deposit for the costs only and such deposit was made and transmitted to the appellate court with the conviction. The deposit authorized in lieu of a recognizance on appeal from a summary conviction must include the fine, and the whole sum covering

both the fine and the probable costs of appeal must be transmitted to the appellate court. R. v. Neuberger (1902), 6 C. C. C., 142.

The recognizance upon an appeal from a summary conviction must be conditioned that the defendant should "personally appear," and the omission of the word "personally" makes the recognizance defective. Ex parte Sprague (1903), 8 C. C. C., 109.

Where the condition in a recognizance on appeal from a summary conviction was for appearance and to abide the judgment but omitted the words to "try such appeal," the appellate court will have jurisdiction to hear the appeal if the appellant in fact appears to prosecute.

Where the fine and costs imposed by a summary conviction were payable forthwith and in default of distress the immediate payment of same to the magistrate accompanied by a request for information as to the time allowed for appeal, is not a waiver of the right of appeal. R. v. Tucker (1905), 10 C. C. C., 217.

751. Hearing of appeal.—The court to which such appeal is made shall thereupon hear and determine the matter of appeal and make such order therein, with or without costs to either party, including costs of the court below, as seems meet to the court, and, in case of the dismissal of an appeal by the defendant and the affirmance of the conviction or order, shall order and adjudge the appellant to be punished according to the conviction or to pay the amount adjudged by the order, and to pay such costs as are awarded, and shall, if necessary, issue process for enforcing the judgment of the court.

2. **Deposit under former practice.**—In any case where a deposit was made on appeal previously to the twentieth day of July in the year of our Lord one thousand nine hundred and five, if the conviction or order is affirmed, the court may order that the sum thereby adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal, shall be paid out of the money deposited, and that the residue, if any, shall be repaid to the appellant; and, if the conviction or order is quashed, the court shall order the money to be repaid to the appellant.

3. **Adjourning hearing.**—The court to which such appeal is made shall have power, if necessary, from time to time, by order endorsed on the conviction or order, to adjourn the hearing of the appeal from one sittings to another, or others, of the said court.

4. **Memo. of quashing.**—Whenever any conviction or order is quashed on appeal, the clerk of the peace or other proper officer shall forthwith endorse on the conviction or order a memorandum that the same has been quashed.

5. **Evidence of quashing.**—Whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall, when certified under

the hand of the clerk of the peace, or of the proper officer having the custody of the same, be sufficient evidence, in all courts and for all purposes, that the conviction or order has been quashed 55-56 V., c. 29, s. 880; 4-5 E. VII., c. 10, s. 4.

Where an order is made allowing the prosecutor's appeal and convicting the accused, the costs of the appeal may be included in the costs awarded by the conviction, and the payment thereof may be enforced by a distress warrant and imprisonment in default. R. v. Hawbolt (1900), 4 C. C. C., 229.

Where an appeal is heard, and determined against the appellant, the formal order need not be drawn up at the same sittings, and the respondent's costs may be taxed *nunc pro tunc* at the next sittings and included in a formal order then issued in pursuance of the direction therefor made at the previous sittings. Bothwell v. Burnside (1900), 4 C. C. C., 450.

Code sec. 751 (2) enacting that the court "may" order the fine and costs to be paid out of moneys deposited on taking an appeal if the conviction is affirmed, is to be construed as giving the court no discretion to refuse the application of the party to be benefited by the making of the order. Fenson v. New Westminster (1897), 2 C. C. C., 52.

The giving of proper security upon an appeal from a summary conviction is a statutory condition precedent to the carrying on of a successful appeal, but notwithstanding a defect in the security the court has jurisdiction to award costs against the appellant on giving effect to the objection and dismissing the appeal upon that ground. Ex parte Sprague (1903), 8 C. C. C., 109.

Where the conviction of the magistrate is reversed by the general sessions on appeal, the unauthorized inclusion in the order of the latter court of a direction that the magistrate refund to the appellant the fine and costs collected from him, will not vitiate that part of the order which quashes the conviction with costs. R. v. Tucker (1905), 10 C. C. C., 217.

The court to which an appeal might properly be taken from a summary conviction has jurisdiction to award costs to the respondent on quashing an appeal for want of jurisdiction through a defect in the notice of appeal. R. v. The Doliver Mountain Mining & Milling Co. (1906), 10 C. C. C., 405.

752. Judgment final.—When an appeal against any summary conviction or order has been lodged in due form, and in compliance with the requirements of this Part, the court appealed to shall try, and shall be the absolute judge, as well of the facts as of the law, in respect to such conviction or order.

2. **Either party may call witnesses.**—Any of the parties to the appeal may call witnesses and adduce evidence whether such witnesses were called or evidence adduced at the hearing before the justice or not, either as to the credibility of any witness, or as to any other fact material to the inquiry.

3. **Using evidence taken below.**—Any evidence taken before the justice at the hearing below, certified by the justice, may be read on such appeal, and shall have the like force and effect as if the witness was there examined if the court appealed to is satisfied by affidavit or otherwise, that the personal presence of

the witness cannot be obtained by any reasonable efforts. 55-56 V., c. 29, s. 881.

On an appeal to the Sessions the appellant may tender evidence and witnesses not heard on the trial before the magistrate, and if deprived of this right the order of Sessions should be quashed. R. v. Washington (1881), 46 U. C. Q. B., 221.

An appeal from a summary conviction under the Criminal Code is, in Ontario, to be taken to the Court of General Sessions of the Peace sitting without a jury; and Code section 752, constituting such court the absolute judge as well of the facts as of the law in respect of the conviction or decision appealed against, is *intra vires* of the Dominion Parliament. R. v. Malloy (1900), 4 C. C. C., 116.

A statutory provision that the appellate court shall try the appeal without a jury is one relating to the procedure and not to the constitution of the court. R. v. Malloy, supra; R. v. Bradshaw (1876), 38 U. C. Q. B., 564.

See also R. v. McLeod (1901), 6 C. C. C., 23; Denault v. Robida (1894), 8 C. C. C., 501.

753. Appeals on matters of form.—Objection must have been taken below.— No judgment shall be given in favour of the appellant if the appeal is based on an objection to any information, complaint or summons, or to any warrant to apprehend a defendant issued upon any such information, complaint or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced in support thereof at the hearing of such information or complaint, unless it is proved before the court hearing the appeal that such objection was made before the justice before whom the case was tried, and by whom such conviction, judgment or decision was given, nor unless it is proved that notwithstanding it was shown to such justice that by such variance the person summoned and appearing or apprehended had been deceived or misled, such justice refused to adjourn the hearing of the case to some further day, as in this part provided. 55-56 V., c. 29, s. 882.

Under the Summary Convictions Act. (B. C.), sec. 75 (similar to this section), an objection on an appeal from a summary conviction that the by-law under which the prosecution took place is *ultra vires* is not available unless raised on the hearing before the magistrate.

On an appeal from a summary conviction had upon a plea of guilty the case should not be re-opened and witnesses called as to the merits for the purpose of revising the punishment imposed, if the magistrate has not acted oppressively. R. v. Bowman (1898), 2 C. C. C., 89.

See also R. v. Vrooman (1886), 3 Man R., 509, at p. 513; R. v. Shaw (1865), 11 Jurist N. S., 415; R. v. Duggan (1900), 31 C. L. T., 35.

754. Judgment to be upon the merits.—May confirm, reverse or modify.—In every case of appeal from any summary conviction or order had or made before any justice, the court

to which such appeal is made shall, notwithstanding any defect in such conviction or order, and notwithstanding that the punishment imposed or the order made may be in excess of that which might lawfully have been imposed or made, hear and determine the charge or complaint on which such conviction or order has been had or made, upon the merits, and may confirm, reverse or modify the decision of such justice, or may make such other conviction or order in the matter as the court thinks just, and may by such order exercise any power which the justice whose decision is appealed from might have exercised, and may make such order as to costs to be paid by either party as it thinks fit.

2. **Enforcing conviction.**—Such conviction or order shall have the same effect and may be enforced in the same manner as if it had been made by such justice.

3. **By process of court.**—Any conviction or order made by the court on appeal may also be enforced by process of the court itself. 55-56 V., c. 29, s. 883.

The term "merits" applied to criminal proceedings must mean the justice of the case in reference to the guilt or innocence of the accused of the offence with which he is charged. R. v. Cronin (1875), 36 U. C. Q. B., 342.

The powers of amending a defective summary conviction conferred by this section do not extend to or apply to convictions made under an Ontario Statute. R. v. Lee (1901), 4 C. C. C., 416.

The court of general sessions has no authority to order a person to pay any part of the costs of an appeal to them from a conviction, after he has been acquitted on such appeal. R. v. Orr (1854), 12 U. C. Q. B., 57.

A County Court judge, who has allowed an appeal from a summary conviction under a statutory provision similar to Code sec. 754 and has quashed the conviction as invalid on its face without hearing further evidence and trying the case *de novo*, cannot be compelled by mandamus to re-open the appeal for the purpose of hearing such evidence. Strang v. Gellatly (1904), 8 C. C. C., 17.

755. Costs when appeal not prosecuted.—The court to which an appeal is made, upon proof of notice of the appeal to such court having been given to the person entitled to receive the same, whether such notice has been properly given or not, and though such appeal has not been afterwards prosecuted or entered, may, if such appeal has not been abandoned according to law, at the same sittings for which such notice was given, order to the party or parties receiving the same such costs and charges as are thought reasonable and just by the court, to be paid by the party or parties giving such notice.

2. **How recoverable.**—Such costs shall be recoverable in the manner provided by this Act for the recovery of costs upon an appeal against an order or conviction. 55-56 V., c. 29, s. 884; 57-58 V., c. 57, s. 1.

There is no jurisdiction to award costs against the appellant in respect of the proceedings in appeal at any other sittings than the one for which notice was given. McShadden v. Lachance (1901), 3 C. C. C., 43.
See also Bothwell v. Burnside (1900), 4 C. C. C., 450, 459.

756. Proceedings when appeal fails.—If an appeal against a conviction or order is decided in favour of the respondents, the justice who made the conviction or order, or any other justice for the same territorial division, may issue the warrant of distress or commitment for execution of the same, as if no appeal had been brought. 55-56 V., c. 29, s. 885.

See R. v. Arscott (1885), 9 O. R., 541.

757. Conviction to be transmitted to appeal court.—Every justice before whom any person is summarily tried, shall transmit the conviction or order to the court to which the appeal is by this Part given, in and for the district, county or place wherein the offence is alleged to have been committed, before the time when an appeal from such conviction or order may be heard, there to be kept by the proper officer among the records of the court.

2. **Presumption.**—The conviction or order shall be presumed not to have been appealed against, until the contrary is shown.

3. **Evidence of conviction.**—Upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence.

4. **Clerk of court to remit papers in certain cases.**—In any case when a conviction or order is required by this Part after appeal to be enforced by any justice the clerk of the court to which the appeal was had or other proper officer shall remit such conviction or order and all papers therewith sent to the court of appeal excepting any notice of intention to appeal and recognizance to such justice to be by him proceeded upon as in such case directed by this Part. 55-56 V., c. 29, s. 888.

It is the fact of the conviction being on the file of this court, regularly brought there, that gives the right to move to quash it; how or at whose instance it was brought there, so long as it was brought there regularly, cannot in my opinion affect that right. Per Armour J., in R. v. Whelan (1880), 45 U. C. R., 396.
The court might still be obliged to consider the conviction as upon a certiorari issued at common law if the conviction were found in court, however brought there, so long as it was regularly there. R. v. Levecque (1870), 30 U. C. Q. B., 509.
Held (1) per Scott and Rouleau JJ., that a conviction returned by justices in compliance with a statutory requirement to the office of a

Superior Court is regularly before the court and can be dealt with on a motion to quash, without the necessity of a writ of certiorari.

(2) Per Richardson and Wetmore, JJ., that the conviction was not regularly before the court, and a writ of certiorari to bring it before the court was necessary before a motion to quash the conviction could be properly entertained. R. v. Monaghan (1897), 2 C. C. C., 488.

See also R. v. Ashcroft (1899), 2 C. C. C., 385.

Where a justice making return of a summary conviction to the court to which an appeal is given forwards therewith papers purporting to be depositions upon which the conviction is founded, such court, if one having certiorari jurisdiction, may, upon a motion to quash the conviction take cognizance of such depositions without a writ of certiorari being issued and return made thereto.

Apart from this section it is the duty of the justice to return the information and depositions with the conviction. R. v. Rondeau (1903), 9 C. C. C., 523.

758. Order as to costs.—If upon any appeal the court trying the appeal orders either party to pay costs, the order shall direct the costs to be paid to the clerk of the peace or other proper officer of the court, to be paid over by him to the person entitled to the same, and shall state within what time the costs shall be paid. 55-56 V., c. 29, s. 897.

Proceedings by way of certiorari against a summary conviction do not constitute an "appeal" under this section. R. v. Graham (1898), 1 C. C. C., 405.

Where a prosecution is instituted by a police officer in his own name as informant, in respect of an offence against a municipal by-law, the police officer is personally a party both to the proceedings before the magistrate and to the appeal from his decision, and the municipal corporation is not properly named as a party to such appeal, nor can costs be awarded in favour of the corporation. Bothwell v. Burnside (1900), 4 C. C. C., 450.

759. Recovery of costs.—Certificate.—If such costs are not paid within the time so limited, and the person ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the clerk of the peace or his deputy, on application of the person entitled to the costs, or of any person on his behalf, and on payment of any fee to which he is entitled, shall grant to the person so applying, a certificate that the costs have not been paid.

2. **Distress commitment.**—Upon production of the certificate to any justice in and for the same territorial division, such justice may enforce the payment of the costs by warrant of distress, and in default of distress may by warrant commit the person against whom the warrant of distress has issued, for any term not exceeding one month, unless the amount of the costs and all costs and charges of the distress and also the costs of

the commitment and of the conveying of the party to prison, if the justice thinks fit so to order, are sooner paid.

3. **Form.**—The said certificate shall be in form 52 and the warrants of distress and commitment in forms 53 and 54 respectively. 55-56 V., c. 29, s. 898.

The proceedings for enforcement of an order for costs provided by this section apply only to costs dealt with by a court of General Sessions on affirming or quashing a conviction or order, on appeal to that court. R. v. Graham (1898), 1 C. C. C., 405.

760. Abandonment of appeal.—An appellant may abandon his appeal by giving to the opposite party notice in writing of his intention six clear days before the sitting of the court appealed to, and thereupon the costs of the appeal shall be added to the sum, if any, adjudged against the appellant by the conviction or order, and the justice shall proceed on the conviction or order as if there had been no appeal. 55-56 V., c. 29, s. 899.

The party who originally made the complaint need not always continue to be the party respondent to the appeal taken against the conviction; and some other person may take up the prosecution upon the complainant's death and may be held liable to pay costs if the appeal should be successful. R. v. Truelove (1880), 5 Q. B. D., 336, 340.

STATING A CASE.

761. Statement of case by justices for review.—Any person aggrieved, the prosecutor or complainant as well as the defendant, who desires to question a conviction, order, determination or other proceeding of a justice under this Part, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to such justice to state and sign a case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the justice declines to state the case, may apply to the court for an order requiring the case to be stated.

2. **Regulated by rules.**—The application shall be made and the case stated within such time and in such manner as is, from time to time, directed by rules or orders under section five hundred and seventy-six. 55-56 V., c. 29, s. 900.

When the grounds taken on the motion to quash the convictions are the same as those taken and disposed of by a single judge on a stated case, the matter is *res judicata*. R. v. Monaghan (1897), 2 C. C. C., 488.

The procedure by way of "stated case" under this section is a form of appeal, and as the application of the Criminal Code to offences under Ontario statutes is declared by the Ontario Summary Convictions Act (R. S. O. 1897, c. 90, s. 2) not to affect "procedure on appeals," there is

no jurisdiction to proceed by "stated case" to review a decision of a magistrate in respect of such an offence, except where the constitutionality of Provincial Acts are involved. R. v. Robert Simpson Co., Ltd. (1896), 2 C. C. C., 272.

See also R. v. O'Dea (1900), 3 C. C. C., 402.

The provisions of this and the following sections as to the procedure to obtain a stated case from justices for review by a superior court, are not directory only but conditions precedent to the hearing of the appeal.

A request to the justices to state a case under this section must ask for a case setting forth "the facts of the case and the grounds on which the proceeding is questioned;" and where by rules of court the request is required to be in writing and to be made within a limited time, a written request specifying only that the stated case shall set forth "the grounds on which the conviction is supported," is insufficient.

Objection may be taken on the hearing of the stated case to the invalidity of the request therefor and, if allowed, the appeal must be quashed for want of jurisdiction. R. v. Earley (1906), 10 C. C. C., 280, 336.

In the absence of rules of court fixing the time within which a case shall be stated by a magistrate under this section, the proceeding by way of stated case may be prosecuted within a reasonable time after the order or ruling.

The time limited for appeals from summary convictions has no application to a stated case. R. v. Ferguson (1906), 11 C. C. C., 277.

762. Recognizance of applicant for a case.—Fees.—The appellant at the time of making such application, and before a case is stated and delivered to him by the justice, shall, in every instance, enter into a recognizance before such justice or some other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice seems meet, conditioned to prosecute his appeal without delay, and to submit to the judgment of the court and pay such costs as are awarded by the same; and the appellant shall, at the same time, and before he shall be entitled to have the case delivered to him, pay to the justice such fees as he is entitled to.

2. **Discharge of applicant from custody.**—The appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice, or such other justice as is then sitting, within ten days after the judgment of the court has been given, to abide such judgment, unless the judgment appealed against is reversed. 55-56 V., c. 29, s. 900.

A cash deposit cannot be accepted in lieu of a recognizance on an appeal by way of "stated case" from a summary conviction.

The recognizance required by this section is a condition precedent to the jurisdiction of the court to hear the appeal. R. v. Geiser (1901), 5 C. C. C., 154.

763. Refusal to state a case.—Exception.—If the justice is of opinion that the application is merely frivolous, but not

otherwise, he may refuse to state a case, and shall on the request of the applicant sign and deliver to him a certificate of such refusal: Provided that the justice shall not refuse to state a case where the application for that purpose is made to him by or under the direction of the Attorney General of Canada, or of any province. 55-56 V., c. 29, s. 900.

764. Application to compel case.—Rule therefor.—Where the justice refuses to state a case, it shall be lawful for the applicant to apply to the court, upon an affidavit of the facts, for a rule calling upon the justice, and also upon the respondent, to show cause why such case should not be stated; and such court may make such rule absolute, or discharge the application, with or without payment of costs, as to the court seems meet.

2. **Case to be stated.**—The justice upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as hereinbefore provided. 55-56 V., c. 29, s. 900.

765. Hearing of case stated.—Order final.—The court to which a case is transmitted shall hear and determine the question or questions of law arising thereon, and shall thereupon affirm, reverse, or modify the conviction, order or determination in respect of which the case has been stated, or remit the matter to the justice with the opinion of the court thereon, and may make such other order in relation to the matter, and such orders as to costs, as to the court seems fit; and all such orders shall be final and conclusive upon all parties.

2. **No costs against justice.**—No justice who states and delivers a case shall be liable to any costs in respect or by reason of such appeal against his determination. 55-56 V., c. 29, s. 900.

Where there was ample evidence to warrant the conviction made by a justice of the peace of keeping liquor for sale and no evidence was adduced by the defence in rebuttal of the charge, the court will not on a stated case hold the conviction bad because of the admission of irrelevant testimony.

Only questions of law which have first been raised before the magistrate and which are specified in the formal "case" he has stated to the appellate court, are to be determined upon a stated case. R. v. Nugent (1904), 9 C. C. C., 1.

766. Amendment of case.—The court for the opinion of which a case is stated shall have power, if it thinks fit, to cause the case to be sent back for amendment; and thereupon the

same shall be amended accordingly, and judgment shall be delivered after it has been amended.

2. **Judge at chambers has power of court.**—The authority and jurisdiction of the court for the opinion of which a case is stated may, subject to any rules and orders of court in relation thereto, be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time. 55-56 V., c. 29, s. 900.

767. Enforcement of conviction by justice.—After the decision of the court in relation to any case stated for their opinion, the justice in relation to whose determination the case has been stated, or any other justice exercising the same jurisdiction, shall have the same authority to enforce any conviction, order or determination which has been affirmed, amended or made by such court as the justice who originally decided the case would have had to enforce his determination if a case had not been stated.

2. **By process of court.**—If the court deems it necessary or expedient any order of the court may be enforced by its own process. 55-56 V., c. 29, s. 900.

768.—No certiorari required.—No writ of *certiorari* or other writ shall be required for the removal of any conviction, order or other determination in relation to which a case is stated as aforesaid for obtaining the judgment or determination of a superior court on such case. 55-56 V., c. 29, s. 900.

769.—Statement of case precludes appeal.—Every person for whom a case is stated as aforesaid in respect of any determination of a justice from which he is entitled to an appeal under section seven hundred and forty-nine, shall be taken to have abandoned his said right of appeal finally and conclusively and to all intents and purposes.

2. **No case to be stated when no appeal.**—Where, by any special Act, it is provided that there shall be no appeal from any conviction or order, no proceedings shall be taken to have a case stated or signed as aforesaid in any case to which such provision as to appeal in such special Act applies. 55-56 V., c. 29, s. 900.

A person "appeals" when he formally gives notice to the opposite party of his intention to appeal, although he does not in fact comply with the conditions precedent required to bring the appeal on for hearing. Under a provincial enactment, similar to sub.-sec. 2 of Code sec. 769, providing that a person appealing by way of stated case to a superior court shall be taken to have abandoned his right of appeal to a County

Court, the appellant by obtaining a case to be stated elects that mode of appeal and cannot revert to an appeal to the County Court on the stated case being dismissed for non-compliance with statutory conditions. Cooksley v. Toomaten Oota (1901), 5 C. C. C., 26.

FEES.

770. Fees.—The fees mentioned in the following tariff and no others shall be and constitute the fees to be taken on proceedings before justices under this Part.—

FEES TO BE TAKEN BY JUSTICES OF THE PEACE OR THEIR CLERKS.

1.	Information or complaint and warrant or summons.	$0 50
2.	Warrant where summons issued in first instance.. ..	0 10
3.	Each necessary copy of summons or warrant..	0 10
4.	Each summons or warrant to or for a witness or witnesses. (Only one summons on each side to be charged for in each case, which may contain any number of names. If the justice of the case requires it, additional summonses shall be issued without charge)..	0 10
5.	Information for warrant for witness and warrant..	0 50
6.	Each necessary copy of summons or warrant for witness..	0 10
7.	For every recognizance..	0 25
8.	For hearing and determining case	0 50
9.	If case lasts over two hours..	1 00
10.	Where one justice alone cannot lawfully hear and determine the case the same fee for hearing and determining to be allowed to the associate justice.	
11.	For each warrant of distress or commitment..	0 25
12.	For making up record of conviction or order where the same is ordered to be returned to sessions or on *certiorari*..	1 00
	But in all cases which admit of a summary proceeding before a single justice and wherein no higher penalty than $20 can be imposed, there shall be charged for the record of conviction not more than..	0 50
13.	For copy of any other paper connected with any case, and the minutes of the same if demanded, per folio of 100 words..	0 05
14.	For every bill of costs when demanded to be made out in detail..	0 10
	(Items 13 and 14 to be chargeable only when there has been an adjudication.)	

CONSTABLES' FEES.

1.	Arrest of each individual upon a warrant..	1 50
2.	Serving summons..	0 25
3.	Mileage to serve summons or warrant, per mile (one way) necessarily travelled..	0 10
4.	Same mileage when service cannot be affected, but only upon proof of due diligence.	
5.	Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance.. ..	0 10
6.	Attending justices on trial, for each day necessarily employed in one or more cases, when engaged less than four hours..	1 00
7.	Attending justices on trial, for each day necessarily employed in one or more cases, when engaged more than four hours..	1 50
8.	Mileage travelled to attend trial (when public conveyance can be taken, only reasonable disbursements to be allowed) one way per mile..	0 10
9.	Serving warrant of distress and returning same.. ..	1 00
10.	Advertising under warrant of distress..	1 00
11.	Travelling to make distress or to search for goods to make distress, when no goods are found (one way) per mile..	0 10
12.	Appraisements, whether by one appraiser or more—two cents in the dollar on the value of the goods.	
13.	Commission on sale and delivery of goods—five cents in the dollar on the net proceeds.	

WITNESSES' FEES.

1.	Each day attending trial..	0 75
2.	Mileage travelled to attend trial (one way) per mile	0 10

55-56 V., c. 29, s. 871; 57-58 V., c. 57, s. 1.

The allowance by the magistrate on a summary conviction, of excessive costs in respect of mileage to the constable for serving subpoenas upon witnesses, is not a ground for quashing the conviction. Ex parte Rayworth (1896), 2 C. C. C., 230.

The making up of the costs is a ministerial act and does not affect the jurisdiction. If the magistrate, in making up the costs, has not acted *bona fide*, he is liable to criminal proceedings, or if, acting in good faith, he has taken too much for costs, he may be made to give up the excess; but in either case the conviction will stand. Ex parte Howard (1893), 32 N. B. R., 237.

See also R. v. Laird (1889), 1 Terr. L. R., 179.

PART XVI.

SUMMARY TRIAL OF INDICTABLE OFFENCES.

INTERPRETATION.

771. Definitions.—In this Part, unless the context otherwise requires,—

(a) '**Magistrate**'.—'Magistrate' means and includes,

(i) in the provinces of Ontario, Quebec and Manitoba, any recorder, judge of a county court if a justice of the peace, commissioner of police, judge of the sessions of the peace, and police magistrate, district magistrate, or other functionary or tribunal, invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices, and acting within the local limits of his or of its jurisdiction,

(ii) in the provinces of Nova Scotia and New Brunswick, any recorder, judge of a county court, stipendiary magistrate or police magistrate, acting within the local limits of his jurisdiction, and any commissioner of police and any functionary, tribunal or person invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace,

(iii) in the provinces of British Columbia and Prince Edward Island, any two justices sitting together, and any functionary or tribunal having the powers of two justices,

(iv) in the provinces of Saskatchewan and Alberta, a judge of any district court, or any two justices, or any police magistrate or other functionary or tribunal having the powers of two justices and acting within the local limits of his or its jurisdiction,

(v) in the Northwest Territories, any stipendiary magistrate, any two justices sitting together and any functionary or tribunal having the powers of two justices.

(vi) in the Yukon Territory, any judge of the Territorial Court, any two justices sitting together and any functionary or tribunal having the powers of two justices,

(vii) in all the provinces, where the defendant is charged with any of the offences mentioned in paragraphs (a) and (f) of section seven hundred and seventy-three, any two justices sitting together;

(b) '**The Common gaol or other place of confinement.**'—The common gaol or other place of confinement, in the case

of any offender whose age at the time of his conviction does not, in the opinion of the magistrate, exceed sixteen years, includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which by the law of that province the offender may be sent; and,

(c) '**Property.**'—Property includes everything within the meaning of 'valuable security,' as defined by this Act.

2. **Valuable security, how reckoned.**—In any case where the value of any valuable security is necessary to be determined it shall be reckoned in the manner prescribed by sction four. 55-56 V., c. 29, s. 782; 58-59 V., c. 40, s. 1.

All persons appointed to judicial offices in Canada are required to take the oaths of allegiance and of office before acting in their judicial capacity; and a person temporarily appointed to be Deputy Recorder of Montreal is under the same obligation.

If the accused takes objection at the trial to the qualification of the magistrate to act in the case because of his failure to take such oaths, public acquiescence in his exercise of judicial functions will not avail to make his adjudication binding, and he cannot claim to be in the position of a judge *de facto*.

The accused convicted under Code sec. 773 under such circumstances is entitled to be released from custody upon *habeas corpus*. Ex parte Mainville (1898), 1 C. C. C., 528.

The failure of a judicial officer to take the oath of allegiance and the oath of office where he has acted as the holder of the office and has been acknowledged and accepted as the duly qualified incumbent thereof by the public does not invalidate his judgments in criminal cases when his qualification has not been contested at the time of the trial, and such judgments are valid and binding as having been rendered by a judge *de facto*. Ex parte Curry (1898), 1 C. C. C., 532.

The recorder of the City of Montreal may, as a "magistrate" under Cr. Code sec. 771, summarily try and condemn a person keeping a disorderly house in a manner constituting a nuisance, to a period of imprisonment of six months and to a fine of $100, or, in default of payment of this fine, to six other months. R. v. Bougie (1899), 3 C. C. C., 487.

No appeal lies from the decision of the Recorder's Court of Montreal holding a "summary trial" under Cr. Code sec. 772. R. v. Portugais (1901), 5 C. C. C., 100.

No appeal lies from the decision of a judge of the Sessions, Police Magistrate, District Magistrate or other functionary mentioned in this section, holding a "summary trial" under Code sec. 773. R. v. Racine (1900), 3 C. C. C., 446.

A town police magistrate in Ontario may, in respect of an offence under a provincial statute committed in a part of the same county for which there is no police magistrate, take the information at a city or town (within the county) having a separate police magistrate; and may there try the case as an *ex-officio* justice of the peace, having the powers of two justices of the peace under the Ontario police magistrates' Act. R. v. McLean (1899), 3 C. C. C., 323.

It is within the legislative powers of a provincial legislature to enact that every police magistrate shall constitute a court with such jurisdiction as the Parliament of Canada confers or purports to confer or may

hereafter confer upon him. Such a statute is not an attempted delegation by the province of its constitutional right of constituting courts. Ex parte Vancini (1904), 8 C. C. C., 164.

A justice of the peace not having the powers of two justices has no jurisdiction to hold a "summary trial." R. v. Cote (1903), 8 C. C. C., 393.

Where two justices of the peace in the Territories exercise their jurisdiction of summary trial for the offences of theft, etc., under $10, there is no appeal as such justices have a general jurisdiction under Code sec. 771. R. v. McLennan (1905), 10 C. C. C., 14.

APPLICATION OF PART.

772. Part XVII not affected.—Nothing in this Part shall affect the provisions of Part XVII., and this Part shall not extend to persons punishable under that Part so far as regards offences for which such persons may be punished thereunder. 55-56 V., c. 29, s. 808.

JURISDICTION.

773. Offences.—Whenever any person is charged before a magistrate,—

(a) **Theft not exceeding ten dollars.**—With theft, or obtaining money or property by false pretenses, or unlawfully receiving stolen property, where the value of the property does not, in the judgment of the magistrate, exceed ten dollars; or,

(b) **Attempt.**—With attempt to commit theft; or,

(c) **Aggravated assault.**—With unlawfully wounding or inflicting grievous bodily harm upon any other person, either with or without a weapon or instrument; or,

(d) **Indecent assault.**—With indecent assault upon a male person whose age does not, in the opinion of the magistrate, exceed fourteen years, when such assault is of a nature which cannot, in the opinion of the magistrate, be sufficiently punished by a summary conviction before him under any other Part; or with indecent assault upon a female, not amounting, in the magistrate's opinion, to an assault with intent to commit a rape; or,

(e) **Assault on peace officer.**—With assaulting or obstructing any public or peace officer engaged in the execution of his duty, or any person acting in aid of such officer; or,

(f) **Inmate of house of ill-fame.**—With keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house; or,

(g) **Offence under s. 235.**—With any offence under section two hundred and thirty-five;

Summary hearing.—The magistrate may, subject to the subsequent provisions of this Part, hear and determine the charge in a summary way. 55-56 V., c. 29, s. 783.

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Where the accused found committing an offence under this section is arrested without warrant by a peace officer, and on being brought before a police magistrate a written charge not under oath is read over to him, and he thereupon consents to be tried summarily, the police magistrate has jurisdiction to try the case although no information has been laid under oath. R. v. McLean (1901), 5 C. C. C., 67.

No appeal lies from the decision of a judge of the Sessions, police magistrate, district magistrate, or other functionary mentioned in Code sec. 771 holding a "summary trial" with the consent of the accused under sec. 773. R. v. Racine (1900), 3 C. C. C., 446; R. v. Nixon (1899), 5 C. C. C., 32.

But where the magistrate has absolute jurisdiction to try the offence without the consent of the accused, habeas corpus will lie. R. v. St. Clair (1900), 3 C. C. C., 551.

An appeal does not lie from the decision of a police magistrate who tries a charge of theft summarily with the consent of the accused. R. v. Egan (1896), 1 C. C. C., 112.

It is competent for a magistrate upon the summary trial before him of a prisoner charged under section 773 (a) of the Cr. Code with having committed theft, to convict him of the offence of attempting to commit it provided for in sec. 773 (b). R. v. Morgan (1901), 5 C. C. C., 63.

The word "theft" in this section covers the offence of "stealing from the person." R. v. Conlin (1897), 1 C. C. C., 41.

The punishment upon summary trial for the theft of property not exceeding $10 in value (and not being the offence of stealing from the person) is governed by Code sections 773 and 780 and is therefore limited to six months' imprisonment: R. v. Hayward (1902), 6 C. C. C., 399.

The extended jurisdiction given to magistrates of cities and towns under Code sec. 777 is not controlled by secs. 782 and 783 as regards the offences of theft, false pretences and receiving, where the value exceeds $10; and a magistrate having jurisdiction under sec. 777 may proceed to try such offences without the preliminary investigation required in the case of other magistrates whose jurisdiction depends upon sec. 773. R. v. McLeod (1906), 12 C. C. C., 73.

A magistrate summarily trying, with the consent of the accused, a charge of aggravated assault has jurisdiction to award costs against the accused as well as to impose both fine and imprisonment. R. v. Burtress (1900), 3 C. C. C., 536.

A conviction upon a charge of assault occasioning bodily harm tried summarily by a magistrate with the consent of the accused and the undergoing of the punishment imposed do not constitute a bar to a civil action for damages for the assault. Nevills v. Ballard (1897), 1 C. C. C., 434 (Ont).

But in Quebec it was held by Archibald J., that upon a conviction by a magistrate under sec. 773, on a charge of having committed an "aggravated assault by unlawfully and maliciously inflicting upon another person grievous bodily harm," the civil action was barred on payment of the fine. Hardigan v. Graham (1897), 1 C. C. C., 437.

If the complaint is not preferred by or on behalf of the person aggrieved, but by a constable of his own motion, and the person assaulted merely gives evidence at the hearing, his right of action will not be barred. Miller v. Lea (1898), 2 C. C. C., 282.

In order to constitute "grievous bodily harm," it is not necessary that the injury should be either permanent or dangerous; and an injury is within the meaning of the term if it be such as seriously to interfere with comfort or health. R. v. Archibald (1898), 4 C. C. C., 159.

The provisions of sec. 169 fixing the punishment for which any one guilty of obstructing a peace officer shall be liable "on summary convic-

tion," are controlled by Code sections 773 and 778, and the charge cannot be summarily tried by a magistrate except with the consent of the accused given in conformity with section 778. R. v. Crossen (1899), 3 C. C. C., 152.

The meaning of the words "disorderly house" in Code sections 773 and 774 is governed by the rule *noscitur a sociis*, and is therefore restricted to houses of the nature and kind of a house of ill-fame or bawdy-house. R. v. France (1898), 1 C. C. C., 321.

A prosecution before a magistrate for the offence of being an inmate of a house of ill-fame is none the less a "summary trial" proceeding, although the magistrate's jurisdiction is absolute and is exercisable without the consent of the accused. R. v. Roberts (1901), 4 C. C. C., 253.

On a charge of being an inmate of a bawdy-house it is competent for the accused or her counsel to consent that the evidence which had been given before the magistrate upon a concluded trial of another person for keeping the bawdy-house, should be read as evidence in the case. R. v. St. Clair (1900), 3 C. C. C., 551.

A conviction by a police magistrate for being an inmate of a bawdy-house and imposing a fine of over $50 but which with costs is less than $100 will be considered as a conviction upon summary trial, if the record of proceedings shews that the charge was reduced to writing and pleaded to by the accused, although the conviction itself omits the words "being charged before me" provided in the Code form. R. v. Ames (1903), 10 C. C. C., 52.

8-9 Edw VII c9 repeals this & enacts new Sec 774

774. Absolute jurisdiction in respect to houses of ill-fame.—The jurisdiction of such magistrate is absolute in the case of any person charged with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house, and does not depend on the consent of the person charged to be tried by such magistrate, nor shall such person be asked whether he consents to be so tried.

2. **Not to affect other jurisdiction.**—The provisions of this Part shall not affect the absolute summary jurisdiction given to any justice or justices in any case by any other Part of this Act. 55-56 V., c. 29, s. 784.

A summary conviction by a magistrate in respect of a charge under this part of an indictable offence which the magistrate has absolute jurisdiction to try without the consent of the accused, is subject to be enquired into upon habeas corpus and certiorari proceedings, notwithstanding the provision of sec. 791 declaring that it shall have the same effect as a conviction upon an indictment. R. v. St. Clair (1900), 3 C. C. C., 551.

There is no right of appeal from a conviction by a police magistrate under the summary trials procedure, although the offence is one which the magistrate may try thereunder without the consent of the accused. R. v. Nixon (1899), 5 C. C. C., 32.

775. Absolute jurisdiction as to seafaring person.—The jurisdiction of the magistrate is absolute in the case of any person who, being a seafaring person and only transiently in Canada, and having no permanent domicile therein, is charged, either

within the city of Quebec as limited for the purpose of the police ordinance, or within the city of Montreal as so limited, or in any other seaport city or town in Canada where there is such magistrate, with the commission therein of any of the offences in this Part previously mentioned, and also in the case of any other person charged with any such offence on the complaint of any such seafaring person whose testimony is essential to the proof of the offence.

2. **No consent necessary.**—Such jurisdiction does not depend on the consent of any such person to be tried by the magistrate, nor shall such person be asked whether he consents to be so tried. 55-56 V., c. 29, s. 784.

776. Jurisdiction absolute in certain provinces.—Exception.—The jurisdiction of the magistrate in the provinces of British Columbia, Prince Edward Island, Saskatchewan and Alberta, and in the Northwest Territories and Yukon Territory, under this Part, is absolute without the consent of the party charged, except in cases coming within the provisions of section seven hundred and seventy-seven, and except in cases under sections seven hundred and eighty-two and seven hundred and eighty-three, where the person charged is not a person who under section seven hundred and seventy-five, can be tried summarily without his consent. 63-64 V., c. 46, s. 3.

Code sec. 776 making the jurisdiction of the magistrate absolute in British Columbia, etc., without the consent of the accused, in cases of summary trial for theft under $10, etc., under sec. 773, has not the effect of preventing an appeal when two Justices of the Peace exercise the powers of a magistrate under Code sec. 771 (a. 3) and 771 (a. 5). R. v. Wirth (1896), 1 C. C. C., 231.

777. Summary trial in other cases in Ontario.—If any person is charged in the province of Ontario before a police magistrate or before a stipendiary magistrate in any county, district or provisional county in such province, with having committed any offence for which he may be tried at a court of general sessions of the peace, or if any person is committed to a gaol in the county, district or provisional county, under the warrant of any justice, for trial on a charge of being guilty of any such offence, such person may, with his own consent, be tried before such magistrate, and may, if found guilty, be sentenced by the magistrate to the same punishment as he would have been liable to if he had been tried before the court of general sessions of the peace.

2. **Applies to police magistrates, etc., in cities and towns in other provinces.**—This section shall apply also to police and stipendiary magistrates of cities and incorporated towns in every other part of Canada, and to recorders where they exercise judicial functions: Provided that when the magistrate has jurisdiction by virtue of this section only, no person shall be summarily tried thereunder without his own consent.

3. **Exceptions.**—Sections seven hundred and eighty and seven hundred and eighty-one do not extend or apply to cases tried under this section. 63-64 V., c. 46, s. 3.

A police magistrate trying a prisoner with his own consent for an offence triable at a Court of General Sessions, does not constitute a "court of record" within the meaning of the Ontario Habeas Corpus Act. R. v. Gibson (1898), 2 C. C. C., 302.

Theft from the person is an indictable offence and, therefore, though the prisoner be charged with stealing a sum less than $10, he may be summarily tried by a magistrate without his consent. In such a case, if the accused consents to be tried by a police magistrate, and is convicted, sec. 780 does not apply, but the magistrate has jurisdiction to inflict fourteen years' imprisonment. R. v. Conlin (1897), 1 C. C. C., 41.

The case above cited was decided before this section was amended by the addition of sub.-secs. 2 and 3.

A city stipendiary magistrate holding a summary trial under Code sec. 777 may impose imprisonment not exceeding one year for common assault although Code sec. 291 specifies such punishment with the addition of the words "if convicted upon an indictment."

Section 777 gives to police and stipendiary magistrates of towns and cities the power to award on summary trials held with the consent of the accused, the same punishment as an Ontario Court of General Sessions might impose on a trial on indictment. R. v. Hawes (1902), 6 C. C. C., 238.

On a charge of theft where the value exceeds $10 and the accused consents to a summary trial before a city stipendiary magistrate, such magistrate is not bound to remand him under Code sec. 783, upon his pleading not guilty, but has jurisdiction, apart from sec. 783, conferred by Code sec. 777, under which he may try the charge and impose the same punishment as might be imposed by a court of General Sessions in Ontario. R. v. Bowers (1903), 6 C. C. C., 264.

The extended jurisdiction given to magistrates of cities and towns under this section is not controlled by Code secs. 782 and 783 as regards the offences of theft, false pretences and receiving, where the value exceeds $10; and a magistrate having jurisdiction under sec. 777 may proceed to try such offences without the preliminary investigation required in the case of other magistrates whose jurisdiction depends upon sec. 773.

Where there is a valid conviction under sec. 777, the warrant of commitment thereunder need not recite that the charge was read over to the accused in conformity with sec. 778 before he was asked to plead, for the omission, if otherwise material, is cured by sec. 1130. R. v. McLeod (1906), 12 C. C. C., 73.

See also R. v. Hayward (1902), 6 C. C. C., 399; Re Vanaini (1904), 8 C. C. C., 228.

778. Proceedings on arraignment.—Whenever the magistrate, before whom any person is charged as aforesaid, proposes to dispose of the case summarily under the provisions of this Part, such magistrate, after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and before calling on the person charged for any statement which he wishes to make, shall state to such person the substance of the charge against him.

2. **Accused put to election.**—If the charge is not one that can be tried summarily without the consent of the accused the magistrate shall then address him in these words, or words to the like effect: 'Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the court at which it can probably soonest be tried*).'

3. **Charge reduced to writing.**—If the person charged consents to the charge being summarily tried and determined as aforesaid, or if the power of the magistrate to try it does not depend on the consent of the accused, the magistrate shall reduce the charge to writing and read the same to such person, and shall then ask him whether he is guilty or not of such charge.

4. **Proceedings on confession.—If accused pleads not guilty.**—If the person charged confesses the charge the magistrate shall then proceed to pass such sentence upon him as by law may be passed in respect to such offence, subject to the provisions of this Act; but if the person charged says that he is not guilty, the magistrate shall then examine the witnesses for the prosecution, and when the examination has been completed, the magistrate shall inquire of the person charged whether he has any defence to make to such charge, and if he states that he has a defence the magistrate shall hear such defence, and shall then proceed to dispose of the case summarily. 55-56 V., c. 29, s. 786.

If after election of summary trial the charge is amended so as to charge a different or distinct offence the accused must be again asked to elect. R. v. Woods (1898), 19 C. L. T., 18.

The provisions of Code sec. 169 fixing the punishment for which any one guilty of obstructing a peace officer shall be liable "on summary conviction," are controlled by Code secs. 773 and 778, and the charge cannot be summarily tried by a magistrate except with the consent of the accused given in conformity with section 778. R. v. Crossen (1899), 3 C. C. C., 152.

After the accused consents to summary trial before a magistrate under

Code sec. 778, it is not necessary for the magistrate to again "reduce the charge to writing" if that had been done before the consent was given, and it is sufficient for the magistrate to read to the accused the charge already written.

A consent to summary trial under Code sec. 778 given to the magistrate without the option of a jury trial being expressly stated to the accused, is invalid and a prisoner held upon a conviction based upon such consent must be discharged upon habeas corpus. R. v. Shepherd (1902), 6 C. C. C., 463.

See also R. v. Walsh (1904), 8 C. C. C., 101.

779. Proceedings when accused is a minor.—Whenever the person charged appears to be of, or about, or under the age of sixteen years, and is not represented by counsel present at the time, the magistrate shall not proceed under the last preceding section without first asking the person charged what his age is.

2. **Notice to parents or guardian.**—If such person then states his age as being sixteen years or less, the magistrate shall defer any further action, and shall at once cause notice to be given to the parent or parents of such person, living in the province, if any, or if he has no such parents, or if his parents are unknown, then to the guardian or householder, if any, with whom he ordinarily resides, of such person having been so charged, and of the time and place when such person will be called on to make his election as to whether he will be tried by the said magistrate.

3. **Reasonable time.**—Such notice shall allow reasonable time for the said parents, guardian or householder to be present and advise the said person charged before he is called on to so elect.

4. **Procedure if notice cannot be given.**—At the time fixed by such notice, or if it appears to the satisfaction of the magistrate that there is no person for whom notice is provided as aforesaid, or that all reasonable means to give such notice have been taken without success, then, at the earliest convenient time, the magistrate shall proceed as in the last preceding section provided.

5. **Advice to be given.**—If any person notified as aforesaid is present at the time so fixed, the magistrate shall afford him an opportunity to advise the person charged before he is called upon to elect.

6. **Notice how given.**—The notice provided for by this section may be given by registered letter, if the person to be notified does not reside in the city, town or municipality where the proceedings are had. 4 E. VII., c. 8, s. 1.

780. Penalty under (a) or (b) of s. 773.—In the case of an offence charged under paragraph (a) or (b) of section seven hundred and seventy-three, the magistrate, after hearing the whole case for the prosecution and for the defence, shall, if he finds the charge proved, convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding six months. 55-56 V., c. 29, s. 787.

A conviction which declares that the convicted person is condemned to be imprisoned during the space of six months to be computed from the day of her arrival as a prisoner in the common jail of the district is sufficient, and the day from which the term of the sentence is to be computed is thereby sufficiently expressed. R. v. Bougie (1899), 3 C. C. C., 487.

The decision in R. v. Randolph (1900), 4 C. C. C., 165 does not apply since the Code Amendment Act of 1900, which declares that secs. 787 and 788 (now 780 and 781) do not extend to or apply to cases tried under sec. 785 (now 777). Where the limit of punishment fixed by statute in respect of an offence is "imprisonment not exceeding one month," a sentence for a term of thirty days commencing in the month of February, and therefore exceeding a calendar month, is invalid. R. v. Lee (1901), 4 C. C. C., 416.

781. Conviction.—Penalty.—In any case summarily tried under paragraphs (c), (d), (e), (f), (g), (h) or (i) of section seven hundred and seventy-three, if the magistrate finds the charge proved, he may convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding six months, or may condemn him to pay a fine not exceeding, with the costs in the case, one hundred dollars, or to both fine and imprisonment not exceeding the said sum and term.

2. **Enforcing conviction.**—Such fine may be levied by warrant of distress under the hand and seal of the magistrate, or the person convicted may be condemned, in adition to any other imprisonment on the same conviction, to be committed to the common gaol or other place of confinement for a further term not exceeding six months, unless such fine is sooner paid. 55-56 V., c. 29, s. 788.

This section only applies to authorize six months' imprisonment in default of payment of a fine when fine and imprisonment are conjointly imposed in the first instance. R. v. Stafford (1898), 1 C. C. C., 239.

A fine under this section must not be in the full sum allowed for fine and costs; and where a fine of $100 is imposed the conviction should disclose that there were no costs. R. v. Perry (1899), 35 C. L. J., 174.

See also R. v. Cyr (1887), 12 Ont. P. R., 24.

A magistrate summarily trying, with the consent of the accused, a charge of aggravated assault has jurisdiction to award costs against the

accused as well as to impose both fine and imprisonment. R. v. Burtress (1900), 3 C. C. C., 536.

On a charge under Code sec. 773 of aggravated assault with grievous bodily harm, a police magistrate in Ontario trying the case on the consent of the accused to be tried summarly, the sentence which the magistrate may impose is not limited to six months' imprisonment, but may be as great as can be imposed therefor on a trial on indictment at General Sessions. R. v. Archibald (1898), 4 C. C. C., 159.

By virtue of sec. 773 (f), a stipendiary magistrate has power to summarily determine a charge of being an inmate of a house of ill-fame; and the punishment he may inflict therefor is that specified in this section, and is not limited by anything contained in sec. 239. R. v. Roberts (1901), 4 C. C. C., 253.

Where the sentence imposed upon a summary trial by consent before a city stipendiary magistrate for common assault was, in the first instance, three months' imprisonment without mention of hard labour and the minute of adjudication did not include hard labour, a formal conviction, including hard labour, and a commitment thereon in similar terms are invalid and the accused will be discharged on habeas corpus. Ex parte Carmichael (1903), 8 C. C. C., 19.

782. Theft, false pretenses and receiving stolen property exceeding ten dollars.—Procedure.—When any person is charged before a magistrate with theft or with having obtained property by false pretenses, or with having unlawfully received stolen property, and the value of the property stolen, obtained or received exceeds ten dollars, and the evidence in support of the prosecution is, in the opinion of the magistrate, sufficient to put the person on his trial for the offence charged, such magistrate, if the case appears to him to be one which may properly be disposed of in a summary way, shall reduce the charge to writing, and shall read it to the said person, and, unless such person is one who, under section seven hundred and seventy-five, can be tried summarily without his consent, shall then put to him the question mentioned in section seven hundred and seventy-eight, and shall explain to him that he is not obliged to plead or answer before such magistrate, and that if he does not plead or answer before him, he will be committed for trial in the usual course. 63-64 V., c. 46, s. 3.

The extended jurisdiction given to magistrates of cities and towns under Code sec. 777 is not controlled by secs. 782 and 783 as regards the offences of theft, false pretences and receiving, where the value exceeds $10; and a magistrate having jurisdiction under sec. 777 may proceed to try such offences without the preliminary investigation required in the case of other magistrates whose jurisdiction depends upon sec. 773. R. v. McLeod (1906), 12 C. C. C., 73.

783. Consent and trial.—If the person charged as mentioned in the last preceding section consents to be tried by the magistrate, the magistrate shall then ask him whether he is

guilty or not guilty of the charge, and if such person says that he is guilty, the magistrate shall then cause a plea of guilty to be entered upon the proceedings, and sentence him to the same punishment as he would have been liable to if he had been convicted upon indictment in the ordinary way; and if he says that he is not guilty, he shall be remanded to gaol to await his trial before him in the usual course. 63-64 V., c. 46, s. 3.

See note to preceding section.

784. Magistrate may decide not to proceed summarily.— If, in any proceeding under this Part, it appears to the magistrate that the offence is one which, owing to a previous conviction of the person charged, or from any other circumstance, ought to be made the subject of prosecution by indictment rather than to be disposed of summarily, such magistrate may, before the accused person has made his defence, decide not to adjudicate summarily upon the case; but a previous conviction shall not prevent the magistrate from trying the offender summarily, if he thinks fit so to do. 55-56 V., c. 29, s. 791.

A case which the magistrate has jurisdiction to try summarily without the consent of the accused, may, in his discretion, be proceeded with by way of preliminary inquiry, and the accused may then subsequently be committed for trial. Ex parte Cook (1895), 3 C. C. C., 72.

Where the offence is one which may be summarily tried by a police magistrate on consent, and the accused has consented and made his defence to the charge and been acquitted, it is no longer competent for the magistrate to turn the proceedings into a preliminary inquiry and to accept the prosecutor's recognizance to prefer an indictment. R. v. Burns (1901), 4 C. C. C., 330.

785. Election of trial by jury to be stated on warrant of committal.—If, when his consent is necessary, the person charged elects to be tried before a jury, the magistrate shall proceed to hold a preliminary inquiry as provided in Parts XIII., and XIV., and if the person charged is committed for trial, shall state in the warrant of committal the fact of such election having been made. 55-56 V., c. 29, s. 792.

786. Full defence allowed.—In every case of summary proceedings under this Part the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or solicitor. 55-56 V., c. 29, s. 793.

787. Proceeding in open court.—Every court held by a

magistrate for the purposes of this Part shall be an open public court. 55-56 V., c. 29, s. 794.

As to exclusion of the public from the court-room, see section 645.

788. Procuring attendance of witnesses.—The magistrate before whom any person is charged under the provisions of this Part may, by summons or, by writing under his hand, require the attendance of any person as a witness upon the hearing of the case, at a time and place to be named in such summons, and such magistrate may bind, by recognizance, all persons whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him and then and there to give evidence upon the hearing of such charge.

2. **By warrant if summons disobeyed.**—If any person so summoned, or required or bound as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is made of such person having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, the magistrate before whom such person should have attended may issue a warrant to compel his appearance as a witness. 55-56 V., c. 29, s. 795.

789. Service of summons.—Every summons issued under the provisions of this Part may be served by delivering a copy of the summons to the person summoned, or by delivering a copy of the summons to some inmate of such person's usual place of abode apparently over sixteen years of age.

2. **Writing sufficient.**—Every person required by any writing under the hand of the magistrate to attend and give evidence as aforesaid shall be deemed to have been duly summoned. 55-56 V., c. 29, s. 796.

To raise the question whether proper service has been made and jurisdiction over the person acquired, certiorari is an appropriate remedy. R. v. Smith L. R. (1875), 10 Q. B., 604.

Appeal is not an adequate remedy, because the defendant, in order to assert his appeal, gives the court jurisdiction over his person. Re Ruggles (1902), 5 C. C. C., 163.

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790. Dismissal of charge.—Whenever the magistrate finds the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the fact of such dismissal. 55-56 V., c. 29, s. 797.

791. Effect of conviction.—Every conviction under this

Part shall have the same effect as a conviction upon indictment for the same offence. 55-56 V., c. 29, s. 798.

A summary conviction by a magistrate in respect of a charge under Part XVI of the Code of an indictable offence which the magistrate has absolute jurisdiction to try without the consent of the accused, is subject to be enquired into upon habeas corpus and certiorari proceedings, notwithstanding the provision of this section that it shall have the same effect as a conviction upon an indictment. R. v. St. Clair (1900), 3 C. C. C., 551.

792. Certificate of dismissal or conviction.—Every person who obtains a certificate of dismissal or is convicted under the provisions of this Part, shall be released from all further or other criminal proceedings for the same cause. 55-56 V., c. 29, s. 799.

It has been decided in England, under a somewhat similar statute, that when a person accused of any charge has been summarily tried by a magistrate or justice, and the charge has been dismissed, the person so accused is entitled *ex debito justitiae* to the certificate of dismissal. Hancock v. Somes (1859), 1 E. & E., 795; Costar v. Hetherington (1859), 1 E. & E., 802.

But the certificate should only be given when the case has been fully heard on its merits; if it is granted in a case in which the charge has been withdrawn before the hearing it will not be a bar to later proceedings on account of the same offence. Reed v. Nutt (1890), L. R., 24 Q. B. D., 669.

793. Result of hearing to be filed in court of sessions.—The magistrate adjudicating under the provisions of this Part shall transmit the conviction, or a duplicate of the certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused to the clerk of the peace or other proper officer for the district, city, county or place wherein the offence was committed, there to be kept by the proper officer among the records of the general or quarter sessions of the peace or of any court discharging the functions of a court of general or quarter sessions of the peace. 63-64 V., c. 46, s. 3; 1 E. VII., c. 42, s. 2.

If a conviction has been fyled by a magistrate under this section in a court of superior criminal jurisdiction, a motion may be made to quash the same without the necessity of a writ of certiorari. R. v. Ashcroft (1899), 2 C. C. C., 385 (Terr.)

But the full Court of the Territories was equally divided on this point in R. v. Monaghan (1897), 2 C. C. C., 488.

An amended conviction correcting errors of form in a defective conviction previously transmitted for record under sec. 793 may be filed at any time before the first conviction is attacked, and even pending the trial of a charge of unlawfully remaining at large laid under the defective conviction. R. v. Taylor (1906), 12 C. C. C., 244.

794. Evidence of conviction or dismissal.—A copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein in any legal proceedings. 55-56 V., c. 29, s. 802.

A signed minute of adjudication by justices endorsed upon the original information is not evidence in a subsequent prosecution for unlawfully being at large, of the sentence of imprisonment imposed by the justices, a formal conviction or a certified copy thereof being essential for that purpose. R. v. Taylor (1906), 12 C. C. C., 244.

795. Restitution of property.—The magistrate by whom any person has been convicted under the provisions of this Part may order restitution of the property stolen, or taken or obtained by false pretenses, in any case in which the court, before whom the person convicted would have been tried but for the provisions of this Part, might by law order restitution. 55-56 V., c. 29, s. 803.

796. Remand by justice to magistrate.—Proviso.—Whenever any person is charged before any justice or justices, with any offence mentioned in section seven hundred and seventy-three, and in the opinion of such justice or justices the case is proper to be disposed of summarily by a magistrate, as in this Part provided, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for trial before the nearest magistrate in like manner in all respects as a justice or justices are authorized to commit an accused person for trial at any court: Provided that no justice or justices, in any province, shall so remand any person for trial before any magistrate in any other province.

2. **Jurisdiction.**—Any person so remanded for trial before a magistrate in any city, may be examined and dealt with by the said magistrate or any other magistrate in the same city. 55-56 V., c. 29, s. 804.

797. Provision of Part XV. as to appeals applies.—Exception.—When any of the offences mentioned in paragraphs (a) or (f) of section seven hundred and seventy-three is tried in any of the provinces under this Part an appeal shall lie from a conviction for the offence in the same manner as from summary convictions under Part XV., and all provisions of that Part relating to appeals shall apply to every such appeal: Provided that in the province of Saskatchewan or Alberta there

shall be no appeal if the conviction is made by a judge of a superior court. 58-59 V., c. 40, s. 1.

798. Part XV. or provisions as to preliminary inquiries not to apply.—Except as specially provided for in the two last preceding sections, neither the provisions of this Act relating to preliminary inquiries before justices, nor of Part XV., shall apply to any proceedings under this Part. 55-56 V., c. 29, s. 808.

799. Forms to be used.—May be altered.—A conviction or certificate of dismissal under this Part may be in the form 55, 56, or 57 applicable to the case or to the like effect; and whenever the nature of the case requires it, such forms may be altered by omitting the words stating the consent of the person to be tried before the magistrate, and by adding the requisite words, stating the fine imposed, if any, and the imprisonment, if any, to which the person convicted is to be subjected, if the fine is not sooner paid. 55-56 V., c. 29, s. 807.

The conviction should be framed in such terms as will shew upon the face of it that what was charged came under some statute which gives power to convict summarily. R. v. Clark (1862), 21 U. C. Q. B., 552.

PART XVII.

TRIAL OF JUVENILE OFFENDERS FOR INDICTABLE OFFENCES.

INTERPRETATION.

800. Definitions. 'Two or more justices,' or 'the justices.'—In this Part, unless the context otherwise requires,—

(a) 'two or more justices,' or 'the justices,' includes,

(i) in the provinces of Ontario and Manitoba, any judge of the county court being a justice, police magistrate or stipendiary magistrate, or any two justices, acting within the limits of their respective jurisdictons,

(ii) in the province of Quebec, any two or more justices, the sheriff of any district, except Montreal and Quebec, the deputy sheriff of Gaspé, and any recorder, judge of the sessions of the peace, police magistrate, district magistrate or stipendiary magistrate, acting within the limits of their respective jurisdictions,

(iii) in the provinces of Nova Scotia, New Brunswick, Prince Edward Island and British Columbia, any functionary or tribunal invested by the proper legislative authority with power to do acts usually required to be done by two or more justices.

(iv) in the provinces of Saskatchewan and Alberta, a judge of any district court, or any two justices, or any police magistrate or other functionary or tribunal having the power of two justices and acting within the local limits of his or its jurisdiction,

(v) in the Northwest Territories, any stipendiary magistrate, any two justices sitting together, and any functionary or tribunal having the powers of two justices, and

(vi) in the Yukon Territory, any judge of the Territorial Court, any two justices sitting together, and any functionary or tribunal having the powers of two justices;

(b) '**Common gaol.**'—'The common gaol or other place of confinement' includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which, by the law of that province, the offender may be sent. 55-56 V., c. 29, s. 809.

A judicial officer who has not taken the oaths of allegiance and office, and whose qualifications are on that ground objected to by an accused person before trial, cannot give a valid judgment; and the fact that he is generally recognized by the public as such judicial officer will not affect the position. Ex parte Mainville (1898), 1 C. C. C., 528.

But if the qualifications of such judicial officer are not objected to at the time of the trial, his judgment in a criminal matter is valid and binding as having been in fact rendered by a *de facto* judge. Ex parte Curry (1898), 1 C. C. C., 532.

APPLICATION OF PART.

801. Not to certain offences in B. C. or P. E. I.—The provisions of this Part shall not apply to any offence committed in the province of British Columbia or Prince Edward Island, punishable by imprisonment for two years and upwards; and in such provinces it shall not be necessary to transmit any recognizance to the clerk of the peace or other proper officer. 55-56 V., c. 29, s. 829.

JURISDICTION.

802. Theft by person not over sixteen.—Every person charged with having committed, or having attempted to commit any offence which is theft, or punishable as theft, and whose age, at the period of the commission or attempted commission of such offence, does not, in the opinion of the justice before whom he is brought or appears, exceed the age of sixteen years, shall, upon conviction thereof in open court, upon his own confession or upon proof, befor any two or more justices, be committed to the common gaol or other place of confinement

within the jurisdiction of such justices, there to be imprisoned, with or without hard labour, for any term not exceeding three months, or, in the discretion of such justices, shall forfeit and pay such sum, not exceeding twenty dollars, as such justices adjudge. 55-56 V., c. 29, s. 810.

The power of determining the age or apparent age of the accused is given exclusively to the justice; and a conviction will not be held bad for the omission to state that the accused is under the age of sixteen years. R. v. Quinn (1900), 36 C. L. J., 644.

803. No imprisonment in reformatory in Ontario.—The provisions of this Part shall not authorize two or more justices to sentence offenders to imprisonment in a reformatory in the province of Ontario. 55-56 V., c. 29, s. 830.

804. Not to prevent summary conviction.—Nothing in this Part shall prevent the summary conviction of any person who may be tried thereunder before one or more justices, for any offence for which he is liable to be so convicted under any other Part of this Act or under any other Act. 55-56 V., c. 29, s. 831.

PROCEDURE.

805. Procuring appearance of accused.—Whenever any person, whose age is alleged not to exceed sixteen years, is charged with any offence mentioned in section eight hundred and two, on the oath of a credible witness, before any justice, such justice may issue his summons or warrant, to summon or to apprehend the person so charged, to appear before any two justices, at a time and place to be named in such summons or warrant. 55-56 V., c. 29, s. 811

806. Remand of accused.—Any justice, if he thinks fit, may remand for further examination or for trial, or suffer to go at large, upon his finding sufficient sureties, any such person charged before him with any offence aforesaid.

2. **Sureties bound by recognizances.**—Every such surety shall be bound by recognizance conditioned for the appearance of such person before the same or some other justice or justices for further examination, or for trial before two or more justices as aforesaid, or for trial by indictment at the proper court of criminal jurisdiction, as the case may be.

3. **Recognizances enlarged.**—Every such recognizance may be enlarged, from time to time, by any such justice or justices to such further time as he or they appoint; and every such recognizance not so enlarged shall be discharged without fee or

reward, when the person has appeared according to the condition thereof. 55-56 V., c. 29, s. 812.

807. Election.—The justices before whom any person is charged and proceeded against under the provisions of this Part, before such person is asked whether he has any cause to show why he should not be convicted, shall address the person so charged in these words, or words to the like effect:—

'We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a jury, you must object now to our deciding upon it at once.'

2. **Objection of accused or parent or guardian.**—And if such person, or a parent or guardian of such person, then objects, no further proceedings shall be had under the provisions of this Part; but the justices may deal with the case according to the provisions set out in Parts XIII. and XIV., as if the accused were before them thereunder. 55-56 V., c. 29, s. 813.

See sections 644 and 645 as to trial.

808. When accused shall not be tried summarily.— If the justices are of opinion, before the person charged has made his defence, that the charge is, from any circumstance, a fit subject for prosecution by indictment, or if the person charged, upon being called upon to answer the charge, objects to the case being summarily disposed of under the provisions of this Part, the justices shall not deal with it summarily, but may proceed to hold a preliminary inquiry as provided for in Parts XIII. and XIV.

2. **Election to be stated in warrant.**—In case the accused has elected to be tried by a jury, the justices shall state in the warrant of commitment the fact of such election having been made. 55-56 V., c. 29, s. 814.

809. Summons to witness.—Any justice may, by summons or by writing under his hand, require the attendance of any person as a witness upon the hearing of any case before two justices, under the authority of this Part, at a time and place to be named in such summons. 55-56 V., c. 29, s. 815.

810. Binding over witness.—Any such justice may require and bind by recognizance every person whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him and then and there to give evidence upon the hearing of such charge. 55-56 V., c. 29, s. 816.

811. Warrant when witness disobeys summons.—If any person summoned or required or bound, as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is given of such person having been duly summoned, as hereinafter mentioned, or bound by recognizance, as aforesaid, either of the justices before whom any such person should have attended, may issue a warrant to compel his appearance as a witness. 55-56 V., c. 29, s. 817.

812. Service of summons.—Every summons issued under the authority of this Part may be served by delivering a copy thereof to the person, or to some inmate, apparently over sixteen years of age, at such person's usual place of abode, and every person so required by any writing under the hand or hands of any justice or justices to attend and give evidence as aforesaid, shall be deemed to have been duly summoned. 55-56 V., c. 29, s. 818.

813. Discharge of accused.—Sureties for good behaviour.—If the justices upon the hearing of the case deem the offence not proved, or that it is not expedient to inflict any punishment, they shall dismiss the person charged, and make out and deliver to him a certificate in the form 58, or to the like effect, under the hands of such justices, stating the fact of such dismissal: Provided that if the dismissal shall be on account only of it being deemed inexpedient to inflict any punishment the accused shall be discharged only on his finding sureties for his good behaviour. 55-56 V., c. 29, s. 819.

814. Form of conviction.—The justices before whom any person is summarily convicted of any offence in this Part previously mentioned, may cause the conviction to be drawn up in form 59, or in any other form to the same effect, and the conviction shall be good and effectual to all intents and purposes. 55-56 V., c. 29, s. 820.

See R. v. Quinn (1900), 36 C. L. J., 644.

815. Further proceeding barred.—Every person who obtains such certificate of dismissal, or is so convicted, shall be released from all further or other criminal proceedings for the same cause. 55-56 V., c. 29, s. 821.

816. Conviction and recognizances to be filed.—The justice before whom any person is convicted under the provisions of this Part shall forthwith transmit the conviction and recognizances to the clerk of the peace or other proper officer, for the

district, city, county or union of counties wherein the offence was committed, there to be kept by the proper officer among the records of the court of general or quarter sessions of the peace, or of any other court discharging the functions of a court of general or quarter sessions of the peace. 55-56 V., c. 29, s. 822.

817. Restitution of property.—No conviction under the authority of this Part shall be attended with any forfeiture, except such penalty as is imposed by the sentence; but whenever any person is adjudged guilty under the provisions of this Part, the presiding justice may order restitution of property in respect of which the offence was committed, to the owner thereof or his representatives.

2. **Value of property ordered to be paid.**—If such property is not then forthcoming, the justices, whether they award punishment or not, may inquire into and ascertain the value thereof in money; and, if they think proper, order payment of such sum of money to the true owner, by the person convicted, either at one time or by instalments, at such periods as the justices deem reasonable.

3. **Recovery of same.**—The person ordered to pay such sum may be sued for the same as a debt in any court in which debts of the like amount are, by law, recoverable, with costs of suit, according to the practice of such court. 55-56 V., c. 29, s. 824.

818. Proceedings where penalty is not paid.—Whenever the justices adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this Part, and such penalty is not forthwith paid, they may, if they deem it expedient, appoint some future day for the payment thereof, and order the offender to be detained in safe custody until the day so appointed, unless such offender gives security to the satisfaction of the justices, for his appearance on such day; and the justices may take such security by way of recognizance or otherwise in their discretion.

2. **Commitment to gaol.**—If at any time so appointed such penalty has not been paid, the same or any other justices may, by warrant under their hands and seals, commit the offender to the common gaol or other place of confinement within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication. 55-56 V., c. 29, s. 825.

819. Costs.—Order for payment.—The justices before whom any person is prosecuted or tried for any offence cognizable under this Part may, in their discretion, at the re-

quest of the prosecutor or of any other person who appears on recognizance or summons to prosecute or give evidence against such person, order payment to the prosecutor and witnesses for the prosecution, of such sums as to them seem reasonable and sufficient, to reimburse such prosecutor and witnesses for the expenses they have severally incurred in attending before them, and in otherwise carrying on such prosecution, and also compensate them for their trouble and loss of time therein, and to the constables and other peace officers payment for the apprehension and detention of any persons so charged.

2. **When no conviction.**—The justices may, although no conviction takes place, order all or any of the payments aforesaid to be made, when they are of opinion that the persons, or any of them, have acted in good faith. 55-56 V., c. 29, s. 826.

820. Costs to be certified by justices.—The amount of expenses of attending before the justices and the compensation for trouble and loss of time therein, and the allowances to the constables and other peace officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses and constables for attending at the trial or examination of the offender, shall be ascertained by and certified under the hands of such justices.

2. **Limit.**—The amount of the costs, charges and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of eight dollars. 55-56 V., c. 29, s. 828.

821. Order for payment.—On officer.—Every such order of payment to any prosecutor or other person, after the amount thereof has been certified by the proper justices as aforesaid, shall be forthwith made out and delivered by the said justices or one of them, or by the clerk of the peace or other proper officer, as the case may be, to such prosecutor or other person, upon such clerk or officer being paid his lawful fee for the same, and shall be made upon the officer to whom fines imposed under the authority of this Part are required to be paid over in the district, city, county or union of counties in which the offence was committed, or was supposed to have been committed.

2. **Officer must pay on sight of order.**—Such officer shall upon sight of every such order, forthwith pay to the person named therein, or to any other person duly authorized to receive the same on his behalf, out of any moneys received by him under this Part, the money in such order mentioned, and he shall be allowed the same in his accounts of such moneys. 55-56 V., c. 29, s. 828.

PART XVIII.

SPEEDY TRIALS OF INDICTABLE OFFENCES.

APPLICATION OF PART.

822. Part only of Canada.—The provisions of this Part do not apply to the Northwest Territories or the Yukon Territory. 55-56 V., c. 29, s. 762, 6-7 Edw. VII., c. 45, s. 6.

INTERPRETATION.

823. Definitions.—In this Part, unless the context otherwise requires,—

(a) '**Judge.**'—Means and includes,

(i) in the province of Ontario, any judge of a county or district court, junior judge or deputy judge authorized to act as chairman of the general sessions of the peace,

(ii) in the province of Quebec, in any district wherein there is a judge of the sessions of the peace, such judge of the sessions, and in any district wherein there is no judge of the sessions of the peace, but wherein there is a district magistrate, such district magistrate, or any judge of sessions of the peace; and in any district wherein there is no judge of the sessions of the peace and no district magistrate, any judge of the sessions of the peace or the sheriff of such district,

(iii) in each of the provinces of Nova Scotia, New Brunswick and Prince Edward Island, any judge of a county court,

(iv) in the province of Manitoba, the Chief Justice, or a puisne judge of the Court of King's Bench, or any judge of a county court.

(v) in the province of British Columbia, the Chief Justice or a puisne judge of the Supreme Court, or any judge of a county court,

(vi) in the provinces of Saskatchewan and Alberta, a judge of the Supreme Court of the province, or of any district court.

(b) '**County attorney.**' '**Clerk of the peace.**'—Includes, in the province of Ontario, the County Crown Attorney, in the provinces of Nova Scotia, New Brunswick and Prince Edward Island, any clerk of a county court, and in the province of Manitoba, any Crown attorney, the prothonotary of the Court of King's Bench, and any deputy prothonotary thereof, any deputy clerk of the peace, and the deputy clerk of the Crown and pleas for any district in the said province, and in the provinces of Saskatchewan and Alberta, any local registrar, clerk or deputy

clerk of the Supreme Court of the province, or any clerk or acting clerk of a district court, or any person conducting under proper authority the Crown business of the court. 55-56 V., c. 29, s. 763; 58-59 V., c. 40, s. 1; 63-64 V., c. 46, s. 3. 6-7 Edw. VII., c. 45, s. 6.

In Nova Scotia the County Judge's Criminal Court is not an inferior court subject to review upon habeas corpus of its decisions and proceedings; and the judge of such court is invested as to proceedings within the jurisdiction of that Court with the like powers as belong to a superior court judge. R. v. Burke (1898), 1 C. C. C., 539.

The County Courts of New Brunswick are not Courts of Oyer and Terminer and general gaol delivery. R. v. Wright (1896), 2 C. C. C., 83.

Whether the judge presiding at the trial had jurisdiction to summarily try the defendant, is a "question of law" and may be the subject of a reserved case. In a district in the Province of Quebec, in which there is a district magistrate the sheriff has no jurisdiction to try an accused person under the provisions of the Code relating to the speedy trial of indictable offences. R. v. Paquin (1898), 2 C. C. C., 134.

JURISDICTION.

824. Judge a court of record.—The judge sitting on any trial under this Part for all the purposes thereof and proceedings connected therewith or relating thereto, shall be a court of record, and in every province of Canada, except the provinces of Quebec, Saskatchewan and Alberta, such court shall be called the County Court Judge's Criminal Court of the county or union of counties or judicial district in which the same is held.

2. In the province of Saskatchewan such court shall be called the District Court Judge's Criminal Court, and in the province of Alberta, the District Judge's Criminal Court, of the district in which the same is held.

3. **Record to be filed.**—The record in any such case shall be filed among the records of the court over which the judge presides, and as part of such records. 55-56 V., c. 29, s. 764; 6-7 Edw. VII., c. 45, s. 6.

One of the consequences of a district magistrate in Quebec acting under the Speedy Trials sections being a court of record is that his judgment cannot be enquired into on habeas corpus. Ex parte O'Kane, Ramsay's Cases, 188; R. v. Murray (1897), 1 C. C. C., 452.

825. Offences triable under this Part by consent.—Every person committed to gaol for trial on a charge of being guilty of any of the offences which are mentioned in section five hundred and eighty-two as being within the jurisdiction of the general or quarter sessions of the peace, may, with his own consent, be tried in any province of Canada, and, if convicted, sentenced by the judge.

2. **Entry of consent.**—An entry shall be made of such consent at the time the same is given.

3. **Trial out of sessions and term.**—Such trial shall be had under and according to the provisions of this Part out of sessions and out of the regular term or sittings of the court, and whether the court before which, but for such consent, the said person would be triable for the offence charged or the grand jury thereof is or is not then in session.

4. **Committed for trial.**—A person who has been bound over by a justice or justices under the provisions of section six hundred and ninety-six, and has been surrendered by his sureties, and is in custody on the charge, or who is otherwise in custody awaiting trial on the charge, shall be deemed to be committed for trial within the meaning of this section. 63-64 V., c. 46, s. 3.

In a British Columbia case before the amendment of this section in 1900 (then sec. 765), it was held that the words "committed to gaol for trial" should be construed as including any case where the accused is found in custody charged with an offence in respect of which he has the right to elect in favor of a speedy trial, and although he is so in custody by reason of his surrender for the purpose of appearing before the judge to elect a speedy trial after having been admitted to bail. R. v. Lawrence (1896), 1 C. C. C., 295.

But in Nova Scotia it was held that a person not committed by the magistrate, but admitted to bail by him under sec. 696 was not a person "committed to gaol for trial," although he had given himself into custody. R. v. Gibson (1896), 3 C. C. C., 451.

The prisoner's reply upon arraignment that "for the present" he elected to be tried by a jury is a sufficient election. R. v. Ballard (1897), 1 C. C. C., 96.

If the accused, after electing in favor of a speedy trial, his right to which is disputed by the Crown, takes no further steps to obtain that right and is then indicted at the next Court of Oyer and Terminer, his plea to such indictment will conclude him as to the mode of trial, and he cannot afterwards elect for a speedy trial without a jury. R. v. Lawrence (1896), 1 C. C. C., 295.

The committal referred to in this section is a committal by the magistrate and does not include a judge's order made under sec. 1088 for the render of the accused to gaol at the instance of his bondsmen. R. v. Smith (1898), 3 C. C. C., 467.

Consent does not confer jurisdiction, and the accused may, upon an appeal by way of case reserved, object to the jurisdiction he has himself selected. R. v. Smith, supra.

A district magistrate in Quebec may, under his powers as a justice of the peace, hold a preliminary inquiry and commit for trial, and upon the accused electing in favor of a "speedy trial" in pursuance of this section, the same magistrate may hold the "speedy trial;" but where on the return of a summons in the preliminary inquiry, before such magistrate, the accused consented to be then tried by him without a jury and without a preliminary inquiry or committal for trial, and was tried and convicted, the conviction must be set aside for want of jurisdiction. R. v. Breckenridge (1903), 7 C. C. C., 116.

826. Sheriff to notify judge after committal of accused.—Every sheriff shall, within twenty-four hours after any prisoner charged as aforesaid is committed to gaol for trial, notify the judge in writing that such prisoner is so confined, stating his name and the nature of the charge preferred against him, whereupon, with as little delay as possible, such judge shall cause the prisoner to be brought before him.

2. **Notice to prosecuting officer when judge does not reside in county.**—Where the judge does not reside in the county in which the prisoner is committed, the notification required by this section may be given to the prosecuting officer, instead of to the judge, and the prosecuting officer shall in such case, with as little delay as possible, cause the prisoner to be brought before him. 55-56 V., c. 29, s. 766; 63-64 V., c. 46, s. 3.

827. Arraignment.—The judge or such prosecuting officer upon having obtained the depositions on which the prisoner was so committed shall state to him,—

(a) **The charge.**—That he is charged with the offence, describing it;

(b) **The option.**—That he has the option to be forthwith tried before a judge without the intervention of a jury, or to remain in custody or under bail, as the court decides, to be tried in the ordinary way by the court having criminal jurisdiction.

2. **Early day for trial.**—If the prisoner has been brought before the prosecuting officer, and consents to be tried by the judge, without a jury, such prosecuting officer shall forthwith inform the judge, and the judge shall thereupon fix an early day for the trial and communicate the same to the prosecuting officer.

3. **Prosecuting officer prefers charge.—Plea of guilty.**—In such case or if the prisoner has been brought before the judge and consents to be tried by him without a jury, the prosecuting officer shall prefer the charge against him for which he has been committed for trial, and if, upon being arraigned upon the charge, the prisoner pleads guilty, the prosecuting officer shall draw up a record as nearly as may be in form 60.

4. **Entered on record. Sentence.**—Such plea shall be entered on the record, and the judge shall pass the sentence of the law on such prisoner, which shall have the same force and effect as if passed by a court having jurisdiction to try the offence in the ordinary way. 63-64 V., c. 46, s. 3.

It appears that as the "charge" in the County Judge's Criminal Court

must under this section be prepared from the depositions, an accused person committed upon a preliminary enquiry at which he has waived the taking of depositions, has no right to elect to be tried by such Court. R. v. Gibson (1896), 3 C. C. C., 451.

After a committal for trial at the instance of the Crown upon a charge of manslaughter and arraignment thereon under the speedy trials clauses and election of the accused for speedy trial without a jury, the proceedings in the County Court Judge's Criminal Court will not be stayed at the instance of the Crown to enable a charge of murder to be substituted. R. v. Telford (1904), 8 C. C. C., 223.

The waiver by the accused upon a preliminary enquiry of the taking of depositions and his consent to be committed for trial without any depositions deprives him of the right of speedy trial, as the charge upon a speedy trial must be stated to the accused from the depositions on which he was committed. The information is not a deposition within the meaning of this section. R. v. McDougall (1904), 8 C. C. C., 234.

A prisoner committed for trial who has elected in favor of a speedy trial, but breaks gaol before a day is fixed for such trial, may on his recapture claim the right to a speedy trial for the offence for which he was committed, and this notwithstanding that the grand jury has in the meantime found an indictment against him for such offence.

Where an indictment for breaking gaol has been found without a preliminary enquiry before a magistrate, the accused cannot upon his recapture elect for a speedy trial without a jury upon that charge, although prior to his escape he had elected for a speedy trial upon the principal charge for which he had been committed. R. v. Hebert (1905), 10 C. C. C., 288.

828. Demand of jury trial.—If the prisoner on being brought before the prosecuting officer or before the judge as aforesaid demands a trial by jury, he shall be remanded to gaol.

2. **Re-election.**—Any prisoner who has elected to be tried by jury may, notwithstanding such election, at any time before such trial has commenced, and whether an indictment has been preferred against him or not, notify the sheriff that he desires to re-elect, and it shall thereupon be the duty of the sheriff and judge or prosecuting officer to proceed as directed by section eight hundred and twenty-six.

3. **Procedure thereon.**—Thereafter unless the judge, or the prosecuting officer acting under subsection two of section eight hundred and twenty-six, is of opinion that it would not be in the interests of justice that the prisoner should be allowed to make a second election, the prisoner shall be proceeded against as if his said first election had not been made. 63-64 V., c. 46, s. 3.

A prisoner arraigned before a county judge, and who thereupon demands a trial by jury and elects not to be tried forthwith by such judge without a jury, has no absolute right after remand to gaol to change the election so made, although the election made by him was made under mistake. R. v. Ballard (1897), 1 C. C. C., 96.

The above case was decided before the amendment of 1900 to former section 767 (now 827 and 828). But see R. v. Prevost (1895), 4 B. C. R., 326.

The surrender and election in favor of speedy trial of a person who,

at the preliminary inquiry, was bailed to appear for trial, must take place before a true bill has been found by the grand jury and filed of record in the jury court, and unless so made the jury court will have exclusive jurisdiction.

This section confers the right to re-elect in favor of a speedy trial, notwithstanding a pending indictment, only in case the accused has been arraigned under the speedy trials procedure, and has thereupon elected against a speedy trial. R. v. Komiensky (1903), 6 C. C. C., 524.

829. Persons jointly accused.—If one of two or more prisoners charged with the same offence demands a trial by jury, and the other or others consent to be tried by the judge without a jury, the judge, in his discretion, may remand all the said prisoners to gaol to await trial by a jury. 55-56 V., c. 29, s. 768.

830. Election under Parts XVI. or XVII.—If under Part XVI. or Part XVII., any person has been asked to elect whether he would be tried by the magistrate or justices, as the case may be, or before a jury, and he has elected to be tried by a jury, and if such election is stated in the warrant of committal for trial, the sheriff, prosecuting officer or judge shall not be required to take the proceedings directed by this Part.

2. **Re-election.**—If such person, after his said election to be tried by a jury, has been committed for trial he may at any time before the regular term or sittings of the court at which such trial by jury would take place, notify the sheriff that he desires to re-elect.

3. **Procedure in such case.**—In such case it shall be the duty of the sheriff to proceed as directed by section eight hundred and twenty-six, and thereafter the person so committed shall be proceeded against as if his said election in the first instance had not been made. 55-56 V., c. 29, s. 769.

831. Continuance of proceedings before another judge.—Proceedings under this Part commenced before any judge may, where such judge is for any reason unable to act, be continued before any other judge competent to try prisoners under this Part in the same judicial district, and such last mentioned judge shall have the same powers with respect to such proceedings as if such proceedings had been commenced before him, and may cause such portion of the proceedings to be repeated before him as he shall deem necessary. 55-56 V., c. 29, s. 770.

832. Election after committal under Parts XVI. or XVII.—If, on the trial under Part XVI. or Part XVII. of any person charged with any offence triable under the provisions of

this Part, the magistrate or justices decide not to try the same summarily, but commit such person for trial, such person may afterwards, with his own consent, be tried under the provisions of this Part. 55-56 V., c. 29, s. 771.

833. Trial of accused.—Conviction.—If the prisoner upon being arraigned under this Part consents as aforesaid and pleads not guilty the judge shall appoint an early day, or the same day, for his trial, and the county attorney or clerk of the peace shall subpœna the witnesses named in the depositions, or such of them and such other witnesses as he thinks requisite to prove the charge, to attend at the time appointed for such trial, and the judge may proceed to try such prisoner, and if he be found guilty sentence as aforesaid shall be passed upon him.

2. **Acquittal. Discharge.**—If he be found not guilty the judge shall immediately discharge him from custody, so far as respects the charge in question.

3. **Form of record.**—The prosecuting officer in such case shall draw up a record as nearly as may be in form 61. 55-56 V., c. 29, s. 772.

A preliminary inquiry held by a magistrate and a commitment for trial made on a statutory holiday are bad in law. If after such commitment the accused elects to be tried at the County Judge's Criminal Court and pleads there to the charge and is convicted, the conviction is not invalidated because of the invalidity of the commitment for trial. R. v. Murray (1897), 1 C. C. C., 452.

A speedy trial at a County Judge's Criminal Court and a conviction thereon are not invalidated by the judge having taken evidence upon another charge against the same accused pending an adjournment of the hearing of the principal charge and after part of the evidence therein had been taken, if the charges were different as to time and place and the judge certifies that he was not influenced as to the principal charge by the evidence in the other. R. v. Bullock (1903), 8 C. C. C., 8.

834. Preferring charges other than those for which accused is committed.—The county attorney or clerk of the peace or other prosecuting officer may, with the consent of the judge, prefer against the prisoner a charge or charges for any offence or offences for which he may be tried under the provisions of this Part other than the charge or charges for which he has been committed to gaol for trial, although such charge or charges do not appear or are not mentioned in the depositions upon which the prisoner was so committed.

2. **Subsequent proceedings thereon.**—Any such charge may thereupon be dealt with, prosecuted and disposed of, and the prisoner may be remanded, held for trial or admitted to bail thereon,

in all respects as if such charge had been the one upon which the prisoner was committed for trial. 55-56 V., c. 29, s. 773.

See Goodman v. R. (1883), 3 O. R., 18.

The charge which may be added or substituted with the judge's consent at a speedy trial under this section must be cognate to the one for which the accused was committed or bailed, and it is not permissible to add or substitute a charge wholly disconnected therewith. R. v. Wener (1903), 6 C. C. C., 406.

835. Powers of judge on trial.—The judge shall, in any case tried before him, have the same power as to acquitting or convicting, or convicting of any other offence than that charged, as a jury would have in case the prisoner were tried by a court having jurisdiction to try the offence in the ordinary way, and may render any verdict which might be rendered by a jury upon a trial at a sitting of any such court. 55-56 V., c. 29, s. 774.

See R. v. Haines (1877), 42 U. C. Q. B., 208.

836. Bail if trial by judge.—If the prisoner elects to be tried by a judge without the intervention of a jury the judge may, in his discretion, admit him to bail to appear for his trial, and extend the bail, from time to time, in case the court be adjourned or there is any other reason therefor.

2. **Before clerk of the court.**—Such bail may be entered into and perfected before the clerk of the court. 55-56 V., c. 29, s. 775.

837. Bail if trial by jury.—If a prisoner elects to be tried by a jury the judge may, instead of remanding him to gaol, admit him to bail to appear for trial at such time and place and before such court as is determined upon, and such bail may be entered into and perfected before the clerk of the court. 55-56 V., c. 29, s. 776.

838. Adjournment.—The judge may adjourn any trial from time to time until finally terminated. 55-56 V., c. 29, s. 777.

An adjournment of a speedy trial may be made under this section in order to obtain the attendance of a material witness, although the party applying for same had elected to proceed without such witness, and although the trial had commenced. R. v. Gordon (1898), 2 C. C. C., 141.

Notwithstanding this section, it is not competent for a judge trying a charge without a jury under the speedy trials clauses of the Code to postpone his decision on the first charge until he has heard the evidence on several other charges against the same accused party, and to then decide the question of guilt in all. Such a proceeding prejudices the accused in his defence and entitles him to a new trial upon both charges.

If time be required in the first case for deliberation on the question of guilt after hearing the evidence, an adjournment may be made, but the trial of the subsequent charges must likewise be postponed. R. v. McBerny (1897), 3 C. C. C. 339.

839. Powers of amendment.—The judge shall have all the powers of amendment which are possessed by any court before which an indictment may be tried under this Act. 55-56 V., c. 29, s. 778.

840. Recognizance to prosecute or give evidence.—Obligatory.—Notice.—Any recognizance taken under section six hundred and ninety-two, for the purpose of binding a prosecutor or a witness, shall, if the person committed for trial elects to be tried under the provisions of this Part, be obligatory on each of the persons bound thereby, as to all things therein mentioned with reference to the trial by the judge under this Part, as if such recognizance had been originally entered into for the doing of such things with reference to such trial: Provided that at least forty-eight hours' notice in writing shall be given, either personally or by leaving the same at the place of residence of the persons bound by such recognizance as therein described, to appear before the judge at the place where such trial is to be had. 55-56 V., c. 29, s. 779.

841. Witnesses to attend throughout trial.—Every witness, whether on behalf of the prisoner or against him, duly summoned or subpœnaed to attend and give evidence before the judge sitting on any such trial on the day appointed for the same shall be bound to attend and remain in attendance throughout the trial.

2. **Contempt.**—If he fails so to attend he shall be held guilty of contempt of court, and may be proceeded against therefor accordingly. 55-56 V., c. 29, s. 780.

842. Warrant may issue for witness.—Upon proof to the satisfaction of the judge of the service of a subpœna upon any witness who fails to attend before him as required by such subpœna, and upon such judge being satisfied that the presence of such witness before him is indispensable to the ends of justice, he may, by his warrant, cause the said witness to be apprehended and forthwith brought before him to give evidence as required by such subpoena, and to answer for his disregard of the same.

2. **Detention thereunder or release on recognizance.**—Such witness may be detained on such warrant before the said judge, or in the common gaol, with a view to secure his presence as a witness; or, in the discretion of the judge, such witness may

be released on recognizance with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer for his default in not attending upon the said subpœna, as for a contempt.

3. **Contempt.—Penalty.**—The judge may, in a summary manner, examine into and dispose of the charge of contempt against any such witness who, if found guilty thereof, may be fined or imprisoned, or both, such fine not to exceed one hundred dollars and such imprisonment to be in the common gaol, with or without hard labour, and not to exceed the term of ninety days, and he may also be ordered to pay the costs incident to the execution of such warrant and of his detention in custody.

4. **Forms.**—Such warrant may be in form 62 and the conviction for contempt in form 13, and the same shall be authority to the persons and officers therein required to act to do as they are therein respectively directed. 55-56 V., c. 29, s. 781.

PART XIX.

PROCEDURE BY INDICTMENT.

GENERAL PROVISIONS AS TO INDICTMENTS.

843. Need not be on parchment.—It shall not be necessary for any indictment or any record or document relative to any criminal case to be written on parchment. 55-56 V., c. 29, s. 608.

844. Statement of venue.—It shall not be necessary to state any venue in the body of any indictment, and the district, county or place named in the margin thereof shall be the venue for all the facts stated in the body of the indictment.

2. **Local description.**—If local description is required such local description shall be given in the body of the indictment. 55-56 V., c. 29, s. 609.

Archbold (21st ed., p. 57), gives the following as cases in which it has been held necessary to give in the body of the indictment the local description: burglary, housebreaking, stealing in a dwelling-house, being found by night armed with intent to break into a dwelling-house and to commit an indictable offence therein, sacrilege, maliciously firing a dwelling-house, forcible entry, nuisances on highways, poaching, riotously demolishing churches, houses, machinery, etc., and malicious injuries to mill-dams or other local property.

845. Unnecessary statement.—It shall not be necessary to state in any indictment that the jurors present upon oath or affirmation.

2. **Form.**—It shall be sufficient if an indictment begins according to form 63, or to the like effect.

3. **Mistake in heading immaterial.**—Any mistake in the heading shall upon being discovered be forthwith amended, and whether amended or not shall be immaterial. 55-56 V., c. 29, s. 610.

SPECIAL CASES.

846. Indictment for pretending to send money, etc., in letter.—It shall not be necessary to allege, in any indictment against any person for wrongfully and wilfully pretending or alleging that he inclosed and sent, or caused to be inclosed and sent, in any post letter, any money, valuable security or chattel, or to prove on the trial, that the act was done with intent to defraud. 55-56 V., c. 29, s. 618.

847. Indictment for treason, etc.—Every indictment for treason, or for an offence against any of the sections, seventy-six to eighty-six inclusive, shall state overt acts, and no evidence shall be admitted of any overt act not stated unless it is otherwise relevant as tending to prove some overt act stated.

2. **Amendment.**—The power of amending indictments in this Part contained shall not extend to authorize the court to add to the overt acts stated in the indictment. 55-56 V., c. 29, s. 614.

848. Indictment for stealing by tenant or lodger.—An indictment may be preferred against any person who steals any chattel let to be used by him in or with any house or lodging, or who steals any fixture so let to be used, in the same form as if the offender was not a tenant or lodger, and in either case the property may be laid in the owner or person letting to hire. 55-56 V., c. 29, s. 625.

849. Accessories after the fact and receivers.—Every one charged with being an accessory after the fact to any offence, or with receiving any property knowing it to have been stolen, may be indicted, whether the principal offender or other party to the offence or person by whom such property was so obtained has or has not been indicted or convicted, or is or is not amenable to justice, and such accessory may be indicted either alone as for a substantive offence or jointly with such principal or other offender or person.

2. **Joining receivers.**—When any property has been stolen any number of receivers at different times of such property, or of

any part or parts thereof, may be charged with substantive offences in the same indictment, and may be tried together, whether the person by whom the property was so obtained is or is not indicted with them, or is or is not in custody or amenable to justice. 55-56 V., c. 29, s. 627.

Sections 954, 993 and 994 relate to proceedings against and the trial of persons accused of having received goods knowing them to have been stolen. As to accessories after the fact, see sections 71, 76, 267, 574 and 575.

850. Indictment in respect to post office employees.—In any indictment against any person employed in the post office of Canada for any offence against this Act, or against any person for an offence committed in respect of any person so employed, it shall be sufficient to allege that the offender, or such other person, was employed in the post office of Canada at the time of the commission of such offence, without stating further the nature or particulars of his employment. 55-56 V., c. 29, s. 624.

851. Indictment charging previous convictions.—In any indictment for an indictable offence, committed after a previous conviction or convictions for any indictable offence or offences, or for any offence or offences, for which a greater punishment may be inflicted by reason of such previous conviction, it shall be sufficient, after charging the subsequent offence, to state that the offender was at a certain time and place, or at certain times and places, convicted of an indictable offence or offences, or of an offence or offences, as the case may be, and to state the substance and effect only, omitting the formal part of the indictment and conviction, or of the summary conviction, as the case may be, for the previous offence or offences, without otherwise describing the previous offence or offences. 55-56 V., c. 29, s. 628.

See sections 568, 963, 964 and 982.

GENERAL PROVISIONS AS TO COUNTS.

852. Substance of offence stated.—Every count of an indictment shall contain, and shall be sufficient if it contains in substance, a statement that the accused has committed some indictable offence therein specified.

2. **In popular language.**—Such statement may be made in popular language without any technical averments or any allegations of matter not essential to be proved.

3. **In the words of the enactment or otherwise.**—Such statement may be in the words of the enactment describing the

offence or declaring the matter charged to be an indictable offence, or in any words sufficient to give the accused notice of the offence with which he is charged.

4. **Form.**—Form 64 affords examples of the manner of stating offences. 55-56 V., c. 29, s. 611

It is not necessary that an indictment which sufficiently describes that which is by statute an indictable offence should conclude with the words "against the form of the statute in such case made and provided, and against the peace of Our Lord the King, his Crown and dignity." R. v. Doyle (1894), 2 C. C. C., 335.

An indictment that does not set up in the statement of the charge all the essential ingredients, is defective and cannot be sustained. An indictment charging the publication of a defamatory libel, which does not state that the same was likely to injure the reputation of the libelled person by exposing him to hatred, contempt or ridicule, or was designed to insult him, is bad by reason of the omission of an essential ingredient of the offence. Such an indictment cannot be amended and must be set aside and quashed as the defect is a matter of substance. R. v. Cameron (1898), 2 C. C. C., 173.

An indictment multifarious in that it combines a charge of a failure to provide necessaries for a child under sixteen under Code secs. 242 and 244 with a charge of an attempt to murder the child (Code sec. 264), and to which indictment the prisoners pleaded is sufficient upon which to base a conviction thereon for the latter offence without a formal amendment of the indictment, where the presiding judge has withdrawn from the jury that portion of the charge based upon secs. 242 and 244. R. v. Lapierre (1897), 1 C. C. C., 413.

Each count of an indictment must contain a statement of all the essential ingredients which constitute the offence charged. R. v. Weir (1900), 3 C. C. C., 499.

An indictment is sufficient in form if it contains all the allegations essential to constitute the offence and charges in substance the offence created by the statute; and it is immaterial in what part of the same the averment is contained, or that words of equivalent import are used instead of the language of the statute. An indictment charging bank officials with having made a monthly report, etc., "a wilful, false and deceptive statement" of and concerning the affairs of the bank, with intent to deceive, sufficiently charges the offence, under the Bank Act, of having made "a wilfully false or deceptive statement in any return or report" with such intent. R. v. Weir (1899), 3 C. C. C., 102.

The absence or the insufficiency of particulars does not vitiate an indictment nor an information; but if it should be made to appear that there is a reasonable necessity for more specific information, the court or magistrate may, on application of the accused person, order that further particulars be given, but such an order is altogether within the judicial discretion of the judge or magistrate. R. v. France (1898), 1 C. C. C., 321.

It is not necessary to allege in an indictment facts which the law will necessarily infer from the proof of other facts which are alleged. So where an indictment for unlawfully writing and publishing a defamatory libel omitted to allege that the libel was published maliciously, it was held that the indictment was nevertheless good inasmuch as, upon proof of the publication of the libel, the legal inference, until rebutted by the defendant, was that it was published maliciously; and the allegation that the publication was malicious was not, therefore, a necessary averment. R. v. Munslow (1895), 18 Cox C. C., 112.

As a general rule the name of the person against whom an offence has been committed should be given, and any property which has been the subject of an offence should be described. But to prevent a crime going unpunished where it is impossible to give the name of the party, it is in such case sufficient, as an exception to the general rule, for the grand jury to state that it has been committed against a person to the jurors unknown. R. v. Taylor (1895), R. J. Q., 4 Q. B., 226.

An indictment charging that the accused unlawfully attempted to steal from the person of an unknown person the property of such unknown person without giving the name of the person against whom the offence was committted or the description of the property the accused attempted to steal, is sufficient. R. v. Taylor, supra.

The examples in Code form 64 of the description of offences in indictments are intended to illustrate the provisions of Code sec. 852, relating to the form of counts; and the operative effect of form 64, under Code sec. 1152, is not restricted to the validating of counts in respect only of the particular offences for which examples are given in the form, but extends to counts for other offences. R. v. Skelton (1898), 4 C. C. C., 467.

There is a difference between an indictment which is bad for charging an act which as laid is no crime, and an indictment which is bad for charging a crime defectively; the latter may be aided by verdict, the former cannot. R. v. Waters (1848), 1 Den. C. C., 356.

If the indictment charges no crime, the defect is a matter of substance and not amendable, and the court is obliged to arrest the judgment. R. v. Webb (1848), 1 Den. C. C., 338; R. v. Carr., 26 L. C. Jur., 61.

Where the statutory form of indictment is not followed, but the indictment contains all the averments which the statute requires, the addition of other unnecessary averments does not invalidate the indictment although it might not be sufficient at common law. R. v. Coote (1903), 8 C. C. C., 199.

853. Details of circumstances.—Proviso.—Every count of an indictment shall contain so much detail of the circumstances of the alleged offence as is sufficient to give the accused reasonable information as to the act or omission to be proved against him, and to identify the transaction referred to: Provided that the absence or insufficiency of such details shall not vitiate the count.

2. **Reference to section of statute.**—A count may refer to any section or subsection of any statute creating the offence charged therein, and in estimating the sufficiency of such count the court shall have regard to such reference.

3. **Single transaction.**—Every count shall in general apply only to a single transaction. 55-56 V., c. 29, s. 611.

See notes to preceding section.

854. Offences may be charged in the alternative.—A count shall not be deemed objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the enactment describing any indictable offence or declaring the matters acts or

omissions charged to be an indictable offence, or on the ground that it is double or multifarious. 55-56 v., c. 29 s. 612.

855. Count not objectionable or insufficient on ground of omission of certain statements.—No count shall be deemed objectionable or insufficient for the reason only,—

(a) that it does not contain the name of the person injured, or intended, or attempted to be injured; or,

(b) that it does not state who is the owner of any property therein mentioned; or,

(c) that it charges an intent to defraud without naming or describing the person whom it was intended to defraud; or,

(d) that it does not set out any document which may be the subject of the charge; or,

(e) that it does not set out the words used where words used are the subject of the charge; or,

(f) that it does not specify the means by which the offence was committed; or,

(g) that it does not name or describe with precision any person, place or thing; or,

(h) that it does not in cases where the consent of any person, official or authority is required before a prosecution can be instituted, state that such consent has been obtained.

2. **Not to restrict general provisions of ss. 852 and 853.**—No provision contained in this Part as to matters which are not to render any count objectionable or insufficient shall be construed as restricting or limiting in any way the general provisions of sections eight hundred and fifty-two and eight hundred and fifty-three. 55-56 V., c. 29, ss. 613 and 616; 56 V., c. 32, s. 1.

856. Joinder of counts.—Proviso.—Any number of counts for any offence whatever may be joined in the same indictment, and shall be distinguished in the manner shown in form 63, or to the like effect: Provided that to a count charging murder no count charging any offence other than murder shall be joined. 55-56 V., c. 29, s. 626.

Offences of the same character though differing in degree, may be united in the same indictment, and the prisoner tried on both at the same time, and on the trial he may be convicted on the one and not on the other. Theal v. R. (1882), 7 Can. S. C. R., 397, 405.

857. Each count separate.—When there are more counts than one in an indictment each count may be treated as a separate indictment.

2. **Separate trial.—Provision as to theft.**—If the court

thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately: Provided that, unless there be special reasons, no order shall be made preventing the trial at the same time of any number of distinct charges of theft, not exceeding three, alleged to have been committed within six months from the first to the last of such offences, whether against the same person or not. 55-56 V., c. 29, s. 626.

Upon the trial at the same time and upon the same indictment of three distinct charges of theft alleged to have been committed within six months of one another by a prisoner, the jury must necessarily be placed in possession of the evidence upon all the charges before being required to find a verdict upon any of them, notwithstanding the danger that a jury might not separate and properly apply the evidence upon the different charges in dealing with them. Re A. E. Cross (1900), 4 C. C. C., 173 at p. 177.

Where several persons are indicted jointly, the Crown has the option of having them tried separately instead of together, but none of the accused can demand a separate trial as a matter of right. R. v. Weir (1899), 3 C. C. C., 351; R. v. McConohy (1874), 5 Revue Legale, 746; R. v. Littlechild (1871), L. R. 6 Q. B. D., 293.

When the trial of the defendants jointly instead of separately would work an injustice to any of them, the presiding judge may, on due cause being shown, exercise his discretionary right to direct a separate trial. R. v. Weir, supra; R. v. Bradlaugh (1883), 15 Cox C. C., 217.

If at the close of the case for the prosecution, it appears that no evidence is to be given on behalf of one of the defendants, the trial judge may submit his case separately to the jury, but he is not bound to do so. R. v. Hambly (1859), 16 U. C. Q. B., 617.

When either the accused or the prosecution intend to call one of the accused to give evidence for or against a co-defendant, a separate trial should be demanded. Where persons are jointly indicted but are tried separately, one of them is a competent witness against the other although the defendant so called has not been tried and has not been discharged on a *nolle prosequi*, and although he has not pleaded to the indictment. R. v. Winsor (1865), 10 Cox C. C., 276.

Before the Canada Evidence Act, 1893, where the prisoners were indicted jointly but were tried separatly, one of them was a competent witness on behalf of the other. R. v. Jerrett (1863), 22 U. C. Q. B., 499.

But if the accused were jointly indicted and jointly tried, and had been given in charge of the jury, one of them could not be called as a witness for the other. R. v. Payne (1872), 12 Cox C. C., 118.

Since the Canada Evidence Act., 1893, every person charged with an offence is a competent witness whether he is so charged alone or jointly with some other person. But if an accused person has been jointly indicted and jointly tried with another, and has been given in charge to the jury (that being a case in which, under the former law, he was neither competent nor compellable), he is not now a compellable witness, but he is a competent one, and may give evidence if he wishes to do so. If, however, he does not testify, his failure to do so shall not be made the subject of comment by the judge or by counsel for the prosecution in addressing the jury.

Where persons are jointly indicted and one pleads guilty and is sentenced before the trial of the other is concluded, the prisoner so sentenced

is rendered not only a comptent but a compellable witness for or against the other. R. v. Jackson (1855), 6 Cox C. C., 525; R. v. Gallagher (1875), 13 Cox C. C., 61.

See also R. v. McLinehy (1899), 2 C. C. C., 416.

858. Order for trial separately.—Any order for trial upon one or more counts of an indictment separately may be made either before or in the course of the trial, and if it is made in the course of the trial the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed.

2. **Procedure on each count as if separate indictment.**—The counts in the indictment as to which the jury are so discharged shall be proceeded upon in all respects as if they had been found in a separate indictment. 55-56 V., c. 29, s. 626.

See note to preceding section.

PARTICULARS.

859. May be ordered in case of perjury, etc.—The court may, if satisfied that it is necessary for a fair trial, order that the prosecutor shall furnish a particular,—

(a) of what is relied on in support of any charge of perjury, the making of a false oath or of a false statement, fabricating evidence or subornation, or procuring the commission of any of such offences;

(b) of any false pretenses or any fraud charged;

(c) of any attempt or conspiracy by fraudulent means;

(d) stating what passages in any book, pamphlet, newspaper or other printing or writing are relied on in support of a charge of selling or exhibiting an obscene book, pamphlet, newspaper, printing or writing;

(e) further describing any document or words the subject of a charge;

(f) further describing the means by which any offence was committed;

(g) further describing any person, place or thing referred to in any indictment. 55-56 V., c. 29, ss. 613, 615 and 616.

The ordering of particulars to be furnished to the accused by the Crown in respect of an indictment for theft is a matter of judicial discretion. Where the Crown is unable to specify in detail the several sums alleged to have been received and misappropriated by a Government employee and the prosecution is laid for theft of a sum aggregating the deficit appearing upon the employee's books and returns, particulars should be ordered against the Crown, only with regard to the direct proof of details so as not to exclude general evidence based upon the balances returned from time to time. R. v. Stevens (1904), 8 C. C. C., 387.

860. Copy to be furnished.—When any particular as aforesaid is delivered a copy shall be given without charge to the accused or his solicitor, and it shall be entered in the record, and the trial shall proceed in all respects as if the indictment had been amended in conformity with such particular.

2. **Regard to depositions.**—In determining whether a particular is required or not, and whether a defect in the indictment is material to the substantial justice of the case or not, the court may have regard to the depositions. 55-56 V., c. 29, s. 617.

SPECIAL CASES.

861. Libel, etc.—Sufficiency.—No count for publishing a blasphemous, seditious, obscene or defamatory libel, or for selling or exhibiting an obscene book, pamphlet, newspaper or other printed or written matter, shall be deemed insufficient on the ground that it does not set out the words thereof.

2. **Specifying sense.**—A count for libel may charge that the matter published was written in a sense which would make the publishing criminal, specifying that sense without any prefatory averment showing how the matter was written in that sense.

3. **Proof necessary.**—On the trial it shall be sufficient to prove that the matter published was criminal either with or without such innuendo. 55-56 V., c. 29, s. 615.

862. Perjury.—Statements unnecessary.—No count charging perjury, the making of a false oath or of a false statement, fabricating evidence or subornation, or procuring the commission of any of these offences, shall be deemed insufficient on the ground that it does not state the nature of the authority of the tribunal before which the oath or statement was taken or made, or the subject of the inquiry, or the words used or the evidence fabricated, or on the ground that it does not expressly negative the truth of the words used. 55-56 V., c. 29, s. 616.

863. False pretenses.—No count which charges any false pretense, or any fraud, or any attempt or conspiracy by fraudulent means, shall be deemed insufficient because it does not set out in detail in what the false pretenses or the fraud or fraudulent means consisted. 55-56 V., c. 29, s. 616.

HOW AND IN WHOM PROPERTY MAY BE LAID.

864. Statements sufficient in certain cases.—An indictment shall be deemed sufficient in the cases following:—

(a) if it be necessary to name the joint owners of any real or personal property, whether the same be partners, joint tenants, parceners, tenants in common, joint stock companies or trustees, and it is alleged that the property belongs to one who is named, and another or others, as the case may be;

(b) If it is necessary for any purpose to mention such persons and one only is named;

(c) If the property in a turnpike road is laid in the trustees or commissioners thereof without specifying the names of such trustees or commissioners;

(d) If the offence is committed in respect to any property in the occupation or under the management of any public officer or commissioner, and the property is alleged to belong to such officer or commissioner without naming him;

(e) If for an offence under section three hundred and seventy-one the oyster bed, laying or fishery is described by name or otherwise, without stating the same to be in any particular county or place. 55-56 V., c. 29, s. 619.

865. Property of body corporate.—All property, real and personal, whereof any body corporate has, by law, the management, control or custody, shall, for the purpose of any indictment or proceeding against any other person for any offence committed on or in respect thereof, be deemed to be the property of such body corporate. 55-56 V., c. 29, s. 620.

866. Stealing ores or minerals.—In any indictment for any offence mentioned in sections three hundred and seventy-eight and four hundred and twenty-four it shall be sufficient to lay the property in His Majesty, or in any person or corporation, in different counts in such indictment. 55-56 V., c. 29, s. 621.

867. Indictment for offences in respect of postal cards, etc.—In any indictment for any offence committed in respect of any postal card, postage stamp or other stamp issued or prepared for issue by the authority of the Parliament of Canada, or of the legislature of any province of Canada or by, or by the authority of, any corporate body for the payment of any fee, rate or duty whatsoever, the property therein may be laid in the person in whose possession, as the owner thereof, it was when the offence was committed, or in His Majesty if it was then unissued or in the

possession of any officer or agent of the Government of Canada or of the province by authority of the legislature whereof it was issued or prepared for issue. 55-56 V., c. 29, s. 622.

868. Theft by public servants.—In every case of theft or fraudulent application or disposition of any chattel, money or valuable security under section three hundred and fifty-nine, paragraph (c), or three hundred and ninety-one, the property in any such chattel, money or valuable security may, in any warrant by the justice before whom the offender is charged, and in the indictment preferred against such offender, be laid in His Majesty, or in the municipality, as the case may be. 55-56 V., c. 29, s. 623.

869. Offences respecting letter bags, etc.—When an offence is committed in respect of a post letter bag, or a post letter, or other mailable matter, chattel, money or valuable security sent by post, the property of such post letter bag, post letter, or other mailable matter, chattel, money or valuable security may, in the indictment preferred against the offender, be laid in the Postmaster General; and it shall not be necessary to allege in the indictment, or to prove upon the trial or otherwise, that the post letter bag, post letter or other mailable matter, chattel or valuable security was of any value.

2. **May be laid in Crown.**—The property of any chattel or thing used or employed in the service of the post office, or of moneys arising from duties of postage, shall, except in the cases aforesaid, be laid in His Majesty, if the same is the property of His Majesty, or if the loss thereof would be borne by His Majesty, and not by any person in his private capacity. 55-56 V., c. 29, s. 624.

PREFERRING INDICTMENT.

870. Order for by judge when perjury committed before him.—Any judge of any court of record before whom any inquiry or trial is held, and which he is by law required or authorized to hold, may, if it appears to him that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, affirmation, declaration, deposition, examination, answer or other proceeding made or taken before him, direct such person to be prosecuted for such perjury, if there appears to such judge a reasonable cause for such prosecution.

2. **Commitment in such case.**—Such judge may commit such person until the next term, sittings or session of any court hav-

ing power to try for perjury, in the jurisdiction within which such perjury was committed, or permit him to enter into a recognizance, with one or more sufficient sureties, conditioned for his appearance at such next term, sittings or session and that he will then surrender and take his trial and not depart the court without leave.

3. **Recognizance may be required.**—Such judge may require any person he thinks fit, to enter into a recognizance conditioned to prosecute or give evidence against the person so directed to be prosecuted. R.S. c. 154, s. 4.

871. Any one bound over may prefer indictment.—Any one who is bound over to prosecute any person, whether committed for trial or not, may prefer a bill of indictment for the charge on which the accused has been committed, or in respect of which the prosecutor is so bound over, or for any charge founded upon the facts or evidence disclosed on the depositions taken before the justice.

2. **Application to quash.**—The accused may at any time before he is given in charge to the jury apply to the court to quash any count in the indictment on the ground that it is not founded on such facts or evidence, and the court shall quash such count if satisfied that it is not so founded.

3. **Quashing during trial.**—If at any time during the trial it appears to the court that any count is not so founded, and that injustice has been or is likely to be done to the accused in consequence of such count remaining in the indictment, the court may then quash such count and discharge the jury from finding any verdict upon it. 63-64 V., c. 46, s. 3.

An indictment for obtaining money under the false pretence that the prisoner had in his warehouse certain produce belonging to the person from whom the money was obtained will not be quashed under this section, although the offence for which the accused was committed for trial was that of stealing the produce mentioned, if the facts disclosed on the depositions taken before the magistrate were sufficient to found a charge of false pretences. R. v. Patterson (1895), 2 C. C. C., 339.

A party bound over by recognizance to prosecute need not personally attend at the sittings of the Court, to prefer an indictment before the grand jury unless required to give evidence, and an indictment found in his absence is valid although no order of the Court, judge's consent, or special direction of the Attorney-General, was given to prefer the same. R. v. Hamilton (1898), 2 C. C. C., 178, (Supreme Court of Nova Scotia).

In the case above cited, which was decided by a full Court, Ritchie J., also held that the Crown prosecutor or counsel appointed for the sittings of the Court sufficiently represents a prosecutor so bound over, to validate the preferring of the indictment by such officer, and the same is to be considered as preferred on behalf of the prosecutor. R. v. Hamilton, supra.

Where the depositions before the magistrate have not been taken ac-

cording to law, and a material provision of the law has not been complied with, the indictment may be quashed under this section upon motion at any time before the accused is given in charge to the jury. R. v. Lepine (1900), 4 C. C. C., 145.

An accused person cannot be said to have been "given in charge" to the jury until the jury are sworn, and his arraignment and the pleading of not guilty to the indictment do not constitute a "giving in charge." R. v. Lepine, supra.

An indictment may be valid as being founded on the evidence disclosed on "the depositions taken before the justice" although the preliminary enquiry was held jointly, in respect of the party indicted and of two others separately charged with the same offence, and the depositions were given in respect of all of them in the one proceeding. R. v. Skelton (1898), 4 C. C. C., 467.

The informant at whose instance an indictment has been preferred for perjury, has no *locus standi* to appear by counsel and take part in the trial, without the consent of the Crown. R. v. Gilmore (1903), 7 C. C. C., 219.

872. Crown counsel may prefer indictment.—The counsel acting on behalf of the Crown at any court of criminal jurisdiction may prefer against any person who has been committed for trial at such court a bill of indictment for the charge on which the accused has been so committed or for any charge founded on the facts or evidence disclosed in the depositions taken before the justice. 63-64 V., c. 46, s. 3.

A prosecution of a municipal corporation for a nuisance in not keeping a public street in repair can only be by indictment under this section. R. v. City of London (1900), 37 C. L. J., 74.

873. Attorney General may prefer indictment.—The Attorney General or any one by his direction or any one with the written consent of a judge of any court of criminal jurisdiction or of the Attorney General, may prefer a bill of indictment for any offence before the grand jury of any court specified in such consent.

2. **Any one by order.**—Any person may prefer any bill of indictment before any court of criminal jurisdiction by order of such court.

3. **Statement of consent.**—It shall not be necessary to state such consent or order in the indictment and an objection to an indictment for want of such consent or order must be taken by motion to quash the indictment before the accused person is given in charge.

4. **Not otherwise preferred.**—Except as in this Part previously provided no bill of indictment shall be preferred in any province of Canada. 63-64 V., c. 46, s. 3.

Where the preferring of an indictment is authorized solely upon the ground that a direction of the Attorney-General has been given therefor, the written consent or direction must be one with regard to the particu-

lar case, and the offence must be specified therein; and a general direction in writing by the Attorney-General authorizing counsel to take charge of the criminal prosecutions for the Crown at the sittings of the court will not suffice. R. v. Townsend (1896), 3 C. C. C., 29; R. v. Hamilton (1898), 2 C. C. C., 178.

A superior court should not make an order that an indictment be preferred against a party accused of an offence, if the two justices before whom the preliminary investigation was held signed a declaration to the effect that they were unable to agree. In such a case the prosecutor should be left to his recourse to an application to the Attorney-General, who can either prefer an indictment himself or direct one to be preferred. Ex parte Hanning (1896), 4 C. C. C., 203.

An endorsement made and signed by the judge upon an indictment by which he "directs" that the indictment be submitted to the grand jury, is a sufficient "consent" of the judge to the preferring of the indictment. R. v. Weir (1899), 3 C. C. C., 155.

An accused against whom an indictment is preferred under the authority of a judge's consent is not entitled to have the indictment quashed by reason of the fact that a preliminary enquiry in regard to the same offence was at the same time pending before a justice of the peace upon which the latter had not given his decision for or against committal for trial. R. v. Weir, supra.

See also R. v. St. Louis (1897), 1 C. C. C., 141, 145.

Where the order or consent of the presiding judge is necessary to validate the preferring of an indictment, such order or consent must be put in writing before the indictment is brought in, and it cannot be afterwards made *nunc pro tunc*. R. v. Beckwith (1903), 7 C. C. C., 450.

In the Province of Alberta, which has no grand jury system, a corporation may be compelled to answer to an indictable offence by a formal written charge in lieu of an indictment, such charge being laid by the Attorney-General or by his direction or with the consent or order of a judge and notice thereof being served on the corporation under section 918 of the Code. R. v. Standard Soap Company (1907), 12 C. C. C., 290.

873a.—In the provinces of Saskatchewan and Alberta, it shall not be necessary to prefer any bill of indictment before a grand jury, but it shall be sufficient that the trial of any person charged with a criminal offence be commenced by a formal charge in writing setting forth as in an indictment the offence with which he is charged.

2. Such charge may be preferred by the Attorney General or an agent of the Attorney General, or by any person with the written consent of the judge of the court or of the Attorney General, or by order of the court.

PROCEEDINGS BEFORE THE GRAND JURY.

874. Evidence.—It shall not be necessary for any person to take an oath in open court in order to qualify him to give evidence before any grand jury. 55-56 V., c. 29, s. 643.

The Grand Jury.—Objections to the constitution of a grand jury cannot

be taken by way of challenge. R. v. Mercier (1892), R. J. Q., 1 Q. B., 541. R. v. Duffy (1848), 4 Cox C. C., 172; R. v. Sheridan (1811), 31 State Trials, 543.

There is at common law inherent power in a superior court of criminal jurisdiction to order one or more grand juries to be summoned. The sheriff or coroner may be directed by the one order to summon both a grand and a petit jury. R. v. McGuire (1898), 4 C. C. C., 12.

Orangemen, as such, are not disqualified to act as grand jurors on an indictment for a riot during which an Orange lodge had been attacked and damaged. R. v. Collins (1878), 2 P. E. I., 249.

The swearing in of a grand jury should take place after its members are duly impannelled; and the foreman's oath should be sworn in the presence of the other grand jurors, they being afterwards sworn to observe the same oath.

Where the grand jurors were called and answered to their names and then the juror, selected as foreman, was impannelled alone and sworn, after which the other jurors were called from amongst the spectators to the box and were sworn to observe their foreman's oath, their proceedings are invalid and an indictment found by them should be quashed on motion. R. v. Belanger (1902), 6 C. C. C., 295.

The presence in the grand jury room of an unauthorized person, summoned as a grand juror, but not impannelled, during the deliberations of the grand jury, will not invalidate an indictment then under consideration, if such person was excluded from the grand jury before the presentment unless it be shewn that the accused was thereby prejudiced.

On discovery that a person summoned as a grand juror and coming into court with the grand jury to present an indictment, had not been sworn, and had been admitted to the grand jury room during their deliberations, the court may exclude such person and direct the grand jury to retire to reconsider the bill without requiring the grand jurors to be resworn. R. v. Kelly (1905), 9 C. C. C., 130.

Where eleven grand jurors answered their names when the roll was first called, but ten only were empanelled and sworn (one having failed to answer on the second calling), the grand jury is properly constituted in a Province where the panel is not more than thirteen. R. v. Fouquet (1905), 10 C. C. C., 255.

It is within the power of a Provincial Legislature to fix the number of the grand jurors who should compose the panel, that being part of the organization or constitution of the Court.

A Provincial Legislature has no power to fix the number of grand jurors necessary to find a good bill of indictment, that being a matter of criminal procedure and exclusively within the powers of the Dominion Parliament. R. v. Cox (1898), 2 C. C. C., 207.

See also the remarks of the late Mr. Justice Wurtele, of the Court of King's Bench, Montreal, in 2 C. C. C., 214 (note).

875. Oath administered by foreman.—The foreman of the grand jury or any member of the grand jury who may, for the time being, act on behalf of the foreman in the examination of witnesses, may administer an oath to every person who appears before such grand jury to give evidence in support of any bill of indictment; and every such person may be sworn and examined upon oath by such grand jury touching the matters in question. **55-56 V., c. 29, s. 644.**

876. Names of witnesses endorsed on bill.—The name of every witness examined, or intended to be examined, shall be endorsed on the bill of indictment; and the foreman of the grand jury, or any member of the grand jury so acting for him, shall write his initials against the name of each witness sworn by him and examined touching such bill of indictment. 55-56 V., c. 29, s. 645.

The provisions of the Criminal Code, sec. 876, requiring the foreman of the Grand Jury to initial upon the bill of indictment the names of witnesses sworn is directory only and not imperative. An indictment should not be quashed because of the omission of the foreman in that respect. R. v. Buchanan (1898), 1 C. C. C., 442 (King's Bench, Man.); R. v. Townsend (1896), 3 C. C. C., 29 (Supreme Court, N. S.); R. v. Holmes (1902), 6 C. C. C., 402 (B. C.)

But the opposite view was taken in the case of R. v. Belanger (1902), 6 C. C. C., 295 by the full Court of King's Bench at Montreal, it being there held that the failure to initial the names of the witnesses examined before the Grand Jury is a good ground for quashing the indictment.

The grand jury may send for and look at any deposition and act upon it, as they think proper. R. v. Bullard, 12 Cox C. C., 353; R. v. Gerrans, 13 Cox C. C., 158.

See also R. v. Howes (1886), 1 B. C. R., pt. 2, p. 307.

877. Names of witnesses to be submitted to grand jury.—The name of every witness intended to be examined on any bill of indictment shall be submitted to the grand jury by the officer prosecuting on behalf of the Crown, and no others shall be examined by or before such grand jury unless upon the written order of the presiding judge. 55-56 V., c. 29, s. 646.

The grand jury is at liberty to examine the Crown witnesses in any order they see fit, and the examination of a single one of them constitutes neither an irregularity nor an illegality, when it is admitted that this witness was in a position to establish full admissions on the part of the prisoner. R. v. Mathurin (1903), 8 C. C. C., 1.

A witness before a grand jury may be indicted for having committed perjury in the course of his evidence. R. v. Hughes (1844), 1 C. & K., 519.

878. Fees for swearing witnesses.—Nothing in this Act shall affect any fees by law payable to any officer of any court for swearing witnesses, but such fees shall be payable as if the witnesses had been sworn in open court. 55-56 V., c. 29, s. 647.

PROCEEDINGS WHEN PERSON INDICTED AT LARGE.

879. Bench warrant.—When any one against whom an indictment has been duly preferred and has been found, and who is then at large, does not appear to plead to such indictment, whe-

ther he is under recognizances to appear or not, the court before which the accused ought to have been tried may issue a warrant for his apprehension, which may be executed in any part of Canada.

2. **Certificate of indictment being found.**—The officer of the court at which said indictment is found, or, if the place of trial has been changed, the officer of the court before which the trial is to take place, shall, at any time after the time at which the accused ought to have appeared and pleaded, grant to the prosecutor, upon application made on his behalf and upon payment of twenty cents, a certificate of such indictment having been found which may be in form 65, or to the like effect. 55-56 V., c. 29, s. 648.

880. Warrant by justice on certificate.—Upon production of such certificate to any justice for the county or place in which the indictment was found, or in which the accused is or resides or is suspected to be or reside, such justice shall issue his warrant to apprehend him, and to cause him to be brought before such justice, or before any other justice for the same county or place, to be dealt with according to law.

2. **Form.**—The warrant may be in the form 66, or to the like effect. 55-56 V. c. 29, s. 648.

A bench warrant directed to a sheriff and to all constables, etc., requiring them to arrest a man and bring him before the court to find securities for his appearance, was signed by the clerk of the peace, but had no seal. It was tested in open sessions at the court house, and was delivered by the clerk of the peace in court to the sheriff, who handed it to his deputy. It was held that the want of a seal did not make the warrant invalid. Fraser v. Dixon (1848), 5 U. C. Q. B., 231.

881. Committal of accused or admission to bail.—Proviso.—If it is proved upon oath before such justice that any one apprehended and brought before him on such warrant is the person charged and named in such indictment, such justice shall, without further inquiry or examination, either commit him to prison by a warrant which may be in form 67, or to the like effect, or admit him to bail as provided in other cases: Provided that if it appears that the accused has without reasonable excuse broken his recognizance to appear he shall not in any case be bailable as of right. 55-56 V., c. 29, s. 648.

882. Warrant when accused in gaol.—If it is proved before the justice upon oath that any such accused person is at the time of such application and production of the said certificate as

aforesaid confined in any prison for any other offence than that charged in the said indictment, such justice shall issue his warrant directed to the warden or gaoler of the prison in which such person is then confined as aforesaid, commanding him to detain him in his custody until by lawful authority he is removed therefrom.

2. **Form.**—Such warrant may be in form 68, or to the like effect. 55-56 V., c. 29, s. 648.

PLACE OF TRIAL.

883. Order for removal of prisoner to place of trial.—If after removal by the Governor in Council or the lieutenant governor in council of any province of any person confined in any gaol to any other place for safe keeping or to any other gaol, a true bill for any indictable offence is returned by any grand jury of the county or district from which any such person is removed against any such person, the court into which such true bill is returned may make an order for the removal of such person from the place for safe keeping or gaol in which he is then confined to the gaol of the county or district in which such court is sitting for the purpose of his being tried in such county or district. 55-56 V., c. 29, s. 650.

884. Change of venue.—Order.—Whenever it appears to the satisfaction of the court or justice hereinafter mentioned, that it is expedient to the ends of justice that the trial of any person charged with an indictable offence should be held in some district, county or place other than that in which the offence is supposed to have been committed, or would otherwise be triable, the court before which such person is or is liable to be indicted may, at any term or sitting thereof, and any judge who might hold or sit in such court may, at any other time, either before or after the presentation of a bill of indictment, order that the trial shall be proceeded with in some other district, county or place within the same province, named by the court or judge in such order.

2. **Conditions as to expense.**—Such order shall be made upon such conditions as to the payment of any additional expense thereby caused to the accused as the court or judge thinks proper to prescribe. 55-56 V., c. 29, s. 651.

Upon an application to change the place of trial of a person accused of murder, and waiting his trial therefor, affidavits were filed to the effect that the popular prejudice against the accused in the place where he would ordinarily be tried, was such as to make it unlikely that he would

obtain a fair trial there, and extracts from different local newspapers were also referred to as being in the same sense. The Crown filed contradicting affidavits. It was held, that even though the affidavits were contradictory, it was necessary to take into account the articles in the newspapers, and that it would be impossible to obtain a fair jury in a community the feelings of which had been so excited by a press which was adverse to the accused. The place of trial was therefore changed. R. v. Wheeler (1896), 32 C. L. J., 458.

The power to change the venue is purely discretionary and should be used with great caution. R. v. Russell (1878), Ramsay's Cases (Que.), 199.

But where the application was made on the part of the accused it was held sufficient to justify the change, that persons might be called on the jury whose opinions might be tainted with prejudice and whom the prisoner could not challenge. R. v. Russell, supra.

"To effect a change of venue, or, more correctly, to change the place of trial, the Court must be specially moved for the purpose; it does not rest with the Crown to select the place for trial by suggestion or otherwise, as it may desire. And the Court will refuse or grant the motion as it may see fit. But it will be granted when there is a reasonable probability that a fair and impartial trial cannot be had in the place where the cause would otherwise be tried." (Sir Adam Wilson). R. v. Carroll (1880), 2 C. C. C., at p. 200.

A change of venue should not be made in a criminal case whereby the trial would be transferred from the county in which the crime is alleged to have been committed, unless facts are proved, as distinguished from sworn opinions, plainly indicating that a fair and impartial trial cannot be had in that county. R. v. Ponton (1898), 2 C. C. C., 192.

A change of venue should not be granted on the ground of popular sympathy with the prisoner and prejudice against the prosecution, where there is nothing to show that the class of citizens from whom the jury would be drawn are likely to be prejudiced except by those feelings which arise from the nature of the offence and which are common in all counties. R. v. Ponton, supra.

A change of venue may be ordered on the application of the Crown, where at an abortive trial, at which the jury disagreed, a hostile demonstration was made against the judge by a mob assembled in the streets during a short adjournment of the trial. The change is rendered "expedient to the ends of justice," because the conduct of the mob tended to bring the administration of justice into contempt, and because of its possible influence on a jury at the next trial; and this notwithstanding the sworn statements of every juror at the abortive trial that they were in no way intimidated or influenced by the mob demonstration, part of which took place within hearing of the jury during their deliberations. R. v. Ponton (1899), 2 C. C. C., 417

Affidavits from the jurors denying intimidation are properly admissible in evidence on a motion to change the venue where such intimidation is charged. R. v. Ponton, supra.

An order for change of the place of trial is not open to objection on the ground that it makes no provision for the additional expense to which the accused might be put by the change, if the judge making such order was not asked to make an order as to such additional expense, and if it was not shewn to such judge that additional expense would be occasioned. R. v. Coleman (1898), 2 C. C. C., 523.

Where, after a committal for trial for an offence under the Criminal Code, an order is made changing the place of trial to another county, an indictment may be preferred in the latter county not only for the offence for which the accused was committed for trial, but for any other offence

disclosed in the depositions taken before the committing justice. R. v. Coleman, supra.

In order to obtain a change of venue in a prosecution for defamatory libel such facts must be shewn as will satisfy the court that a fair trial cannot be had at the present venue, and it is not sufficient that the applicant's solicitor swears to a belief that a fair trial is impossible there because of the prosecutor's interest in political affairs. R. v. Nicol (1900), 4 C. C. C., 1.

The fact that two abortive trials of the cause have already taken place at both of which the jury disagreed, is not of itself a ground for ordering a change of venue. R. v. Nicol, supra.

The balance of convenience as regards the distance which the witnesses would have to travel is not alone a ground for changing the venue in a criminal case.

The principal ground for a change of venue is a reasonable probability of partiality and prejudice in the locality from which the jury would be drawn if the venue were not changed. R. v. O'Gorman (1907), 12 C. C. C., 230.

885. Transmission of record.—Forthwith upon such order being made by the court or judge, the indictment, if any has been found against the prisoner, and all inquisitions, informations, depositions, recognizances and other documents relating to the prosecution against him, shall be transmitted by the officer having the custody thereof to the proper officer of the court at the place where the trial is to be had, and all proceedings in the case shall be had or, if previously commenced, shall be continued in such district, county or place, as if the case had arisen or the offence had been committed therein. 55-56 V., c. 29, s. 651.

886. Order sufficient authority for removal of prisoner.—The order of the court, or of the judge, mad eas aforesaid shall be a sufficient warrant, justification and authority, to all sheriffs, gaolers and peace officers, for the removal, disposal and reception of the prisoner, in conformity with the terms of such order; and the sheriff may appoint and empower any constable to convey the prisoner to the gaol in the district, county or place in which the trial is ordered to be had.

2. **Recognizance binding.—Notice to be given.**—Every recognizance entered into for the prosecution of any person, and every recognizance, as well of any witness to give evidence, as of any person for any offence, shall, in case of any such order, be obligatory on each of the persons bound by such recognizance as to all things therein mentioned with reference to the trial at the place where such trial is so ordered to be had, in like manner as if such recognizance had been originally entered into for the doing of such things at such last mentioned place: Provided that notice in writing shall be given either personally or by leaving

the same at the place of residence of the persons bound by such recognizance, as therein described, to appear before the court, at the place where such trial is ordered to be had. 55-56 V., c. 29, s. 651.

887. Order in Quebec for changing place of trial.—Whenever, in the province of Quebec, it has been decided by competent authority that no term of the Court of King's Bench, holding criminal pleas, is to be held, at the appointed time, in any district in the said province within which a term of the said court should be then held, any person charged with an indictable offence whose trial should by law be held in the said district, may in the manner hereinbefore provided obtain an order that his trial be proceeded with in some other district within the said province, named by the court or judge.

2. **Three preceding sections apply.**—All provisions contained in the three last preceding sections shall apply to the case of a person so applying for and obtaining a change of venue as aforesaid. 57-58 V., c. 57, s. 1.

888. Offence committed in one province not triable in another.—Exception.—Nothing in this Act authorizes any court in one province of Canada to try any person for any offence committed entirely in another province: Provided that every proprietor, publisher, editor or other person charged with the publication in a newspaper of any defamatory libel, shall be dealt with, indicted, tried and punished in the province in which he resides, or in which such newspaper is printed. 55-56 V., c. 29, s. 640.

AMENDMENTS.

889. In case of variance.—If on the trial of any indictment there appears to be a variance between the evidence given and the charge in any count in the indictment, either as found or as amended, or as it would have been if amended in conformity with any particular furnished as provided in section eight hundred and fifty-nine, the court before which the case is tried may, if of opinion that the accused has not been misled or prejudiced in his defence by such variance, amend the indictment or any count in it or any such particular so as to make it conformable with the proof.

2. **Where indictment under wrong Act or contains defective statement.**—If it appears that the indictment has been

preferred under some other Act of Parliament instead of under this Act, or under this instead of under some other Act, or that there is in the indictment, or in any count in it, an omission to state or a defective statement of anything requisite to constitute the offence, or an omission to negative any exception which ought to have been negatived, but that the matter omitted is proved by the evidence, the court before which the trial takes place, if of opinion that the accused has not been misled or prejudiced in his defence by such error or omission, shall amend the indictment or count as may be necessary.

3. **Trial proceeds.**—The trial in either of these cases may then proceed in all respects as if the indictment or count had been originally framed as amended. 55-56 V., c. 29, s. 723.

The court may, at the trial, amend an indictment if the amendment does not change the character or nature of the charge, and if the accused cannot be prejudiced by the change either as regards the evidence applicable or the defence raised. If the amendment asked would substitute a different transaction from that first alleged, or would render a different plea necessary, it ought not to be made. R. v. Weir (1899), 3 C. C. C., 262.

When the false pretence in a charge of obtaining money under false pretences was erroneously laid in the indictment as being that there was in store "a large quantity of beans, to wit, 2,680 bushels of beans," instead of that there were in store "2,680 bushels of beans," as appeared from the depositions taken on the preliminary enquiry, the trial judge may allow an amendment of the indictment to conform with the proof. Although upon the indictment in its original form the charge would be merely upon a false pretence that there was in store "a large quantity of beans," and the number of bushels would not be required to be proved, the variance by reason of the amendment is not such as would mislead or prejudice the accused in his defence. R. v. Patterson (1895), 2 C. C. C., 339.

If the indictment is in such a form that it does not charge an offence the defect cannot be remedied by amendment. R. v. Flynn (1878), 18 N. B. R., 321; R. v. James (1871), 12 Cox C. C., 127.

A person may be described either by his real name or by that by which he is usually known. R. v. Norton (1823), R. & R., 510.

On an indictment for perjury alleged to have been committed on a trial for burning a barn, an amendment was allowed to charge that such trial was for firing a stack. R. v. Neville (1852), 6 Cox C. C., 69.

Where the ownership of stolen property is wrongly stated an amendment may be allowed. R. v. Vincent (1852), 2 Den., 464.

On a charge of theft of money the amount thereof may be amended to conform with the evidence. R. v. Gumble (1872), L. R., 2 C. C. C., 1.

As regards the offence of seduction the change of the date of the alleged offence by an amendment of the indictment or charge is in substance the laying of a new charge to which a different defence might be applicable. Code sec. 889 applies to authorize an amendment as to time or place in a speedy trial charge without re-election only where the act or transaction which forms the foundation of the charge is the same, and a mistake was made in the evidence or charge as to the true date of the occurrence. R. v. Lacelle (1905), 10 C. C. C., 229.

890. Adjournment if accused prejudiced.—If the court is

of the opinion that the accused has been misled or prejudiced in his defence, by any such variance, error, omission or defective statment, but that the effect of such misleading or prejudice might be removed by adjourning or postponing the trial, the court may in its discretion make the amendment and adjourn the trial to a future day in the same sittings, or discharge the jury and postpone the trial to the next sittings of the court, on such terms as it thinks just.

2. **How determined.**—In determining whether the accused has been misled or prejudiced in his defence the court which has to determine the question shall consider the contents of the depositions, as well as the other circumstances of the case.

3. **Question for the court.**—The propriety of making or refusing to make any such amendment shall be deemed a question for the court, and the decision of the court upon it may be reserved for the Court of Appeal, or may be brought before the Court of Appeal by appeal like any other question of law. 55-56 V., c. 29, s. 723.

891. Amendment to be endorsed on the record.—In case an order for amendment as provided for in the two last preceding sections is made it shall be endorsed on the record; and all other rolls and proceedings connected therewith shall be amended accordingly by the proper officer and filed with the indictment, among the proper records of the court. 55-56 V., c. 29, s. 724.

892. Application to amend or divide counts.—The accused may at any stage of the trial apply to the court to amend or divide any count of an indictment which charges in the alternative different matters, acts or omissions, stated in the alternative in the enactment describing the offence or declaring the matters, acts or omissions charged to be an indictable offence, or which is double or multifarious on the ground that it is so framed as to embarrass him in his defence.

2. **Order for amendment or division.**—The court, if it is satisfied that the ends of justice require it, may order any such count to be amended or divided into two or more counts; and on such order being made such count shall be so divided or amended and thereupon a formal commencement may be inserted before each of the counts into which it is divided. 55-56 V., c. 29, s. 612.

893. Amendment at the trial when property wrongly laid.—Upon a prosecution for any offence under section three hundred and seventy-eight or four hundred and twenty-four, any variance when the property is laid in a person or corporation, be-

tween the statement in the indictment and the evidence adduced may be amended at the trial.

2. **No owner proved.**—If no owner is proved, the indictment may be amended by laying the property in His Majesty. 55-56 V., c. 29, s. 621.

INSPECTION AND COPIES OF DOCUMENTS.

894. Right of accused to inspect depositions and have indictment read.—Every accused person shall be entitled at the time of his trial to inspect, without fee or reward, all depositions, or copies thereof, taken against him and returned into the court before which such trial is had, and to have the indictment on which he is to be tried read over to him if he so requires. 55-56 V., c. 29, s. 653.

895. Copy of indictment.—Every person indicted for any offence shall, before being arraigned on the indictment, be entitled to a copy thereof on paying the clerk five cents per folio of one hundred words for the same, if the court is of opinion that the same can be made without delay to the trial, but not otherwise. 55-56 V., c. 29, s. 654.

896. Copy of depositions.—Every person indicted shall be entitled to a copy of the depositions returned into court on payment of five cents per folio of one hundred words for the same.

2. **When no delay caused.**—If a copy is not demanded before the opening of the assizes, term, sittings or sessions, the person indicted shall be entitled to such copy if the court is of opinion that the same can be made without delay to the trial, but not otherwise.

3. **Trial postponed.**—The court may, if it sees fit, postpone the trial on account of such copy of the depositions not having been previously had by the person charged. 55-56 V., c. 29, s. 655.

897. Documents delivered in case of treason, etc.—When any one is indicted for treason or for being accessory after the fact to treason, there shall be delivered to him after the indictment has been found, and at least ten days before his arraignment,—

(a) a copy of the indictment;

(b) a list of the witnesses to be produced on the trial to prove the indictment; and,

(c) a copy of the panel of the jurors who are to try him returned by the sheriff.

2. **Details.**—The list of the witnesses and the copy of the panel of the jurors must mention the names, occupations, and places of abode of the said witnesses and jurors.

3. **Witnesses to delivery.**—The documents aforesaid must all be given to the accused at the same time and in the presence of two witnesses.

4. **Exception.**—This section shall not apply to cases of treason by killing His Majesty, or to cases where the overt act alleged is any attempt to injure his person in any manner whatever, or to the offence of being accessory after the fact to any such treason. 55-56 V., c. 29, s. 658.

OBJECTIONS, PLEAS AND RECORD.

898. Objections before plea.—Amendments.—Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer, or motion to quash the indictment, before the defendant has pleaded, and not afterwards, except by leave of the court or judge before whom the trial takes place, and every court before which any such objection is taken may, if it is thought necessary, cause the indictment to be forthwith amended in such particular, by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

2. **No motion in arrest of judgment.**—No motion in arrest of judgment shall be allowed for any defect in the indictment which might have been taken advantage of by demurrer, or amended under the authority of this Act. 55-56 V., c. 29, s. 629.

There is a difference between an indictment which is bad for charging an act which as laid is no crime, and an indictment which is bad for charging a crime defectively; the latter may be aided by verdict, the former cannot. R. v. Waters (1848), 1 Den. C. C., 356.

If a substantial ingredient of the offence does not appear on the face of the indictment, the court will arrest the judgment. R. v. Carr, 26 L. C. Jur., 61.

If the indictment is in such a form that it does not charge an offence, the court cannot allow an amendment to remedy the defect. R. v. Flynn, 18 N. B. R., 321.

If the defect is one which the court has the power to amend, sec. 898 of the Code applies, and the objection must be raised before plea. R. v. Mason (1872), 22 U. C. C. P., 246.

An objection to an indictment against a corporation upon the ground that it does not disclose any offence in respect of which the defendant corporation could be liable, must be taken by demurrer and not by motion to quash. R. v. Toronto Railway Co. (1900), 4 C. C. C., 4.

It is not necessary that an indictment which sufficiently describes that which is by statute an indictable offence should conclude with the words "against the form of the statute in such case made and provided, and

against the peace of Our Lord the King, his Crown and dignity." R. v. Doyle (1894), 2 C. C. C., 335.

In charging the offence of uttering a forged instrument the indictment must aver that the defendants made use of or uttered the instrument knowing it to have been forged. A count of an indictment charging the defendant with having, with intent to defraud, unlawfully made use of and uttered a promissory note, alleged to have been made and signed by one of the defendants by procuration without lawful authority or excuse and with intent to defraud, is defective if it does not also allege that the defendants knew it to have been so made and signed. Such a defect is one of substance and cannot be amended. R. v. Weir (1900), 3 C. C. C., 499.

899. No plea in abatement.—No plea in abatement shall be allowed.

2. **Constitution of grand jury.**—Any objection to the constitution of the grand jury may be taken by motion to the court, and the indictment shall be quashed if the court is of opinion both that such objection is well founded and that the accused has suffered or may suffer prejudice thereby, but not otherwise. 55-56 V., c. 29, s. 656.

An order of a superior court to a coroner to summon a grand jury need not shew on its face all the facts which made it necessary that a coroner, instead of the sheriff, should be directed to summon the jury. Where a grand jury has been summoned by a sheriff who is disqualified from acting because of his relationship to a prosecutor, a new grand jury may be summoned on a *venire* to a coroner, without formally discharging the jury summoned by the sheriff or disposing of the indictment found by it. The indictment found by the sheriff's grand jury is in such case void, and it is open to the coroner summoning another jury to summon persons already summoned by the sheriff. R. v. McGuire (1898), 4 C. C. C., 12.

Objections to the "constitution" of the grand jury are by Code sec. 899 restricted to cases where the accused are prejudiced by the irregularity, but this limitation does not apply where a grand jury was never legally constituted. R. v. Hayes (1902), 7 C. C. C., 453.

Where the provincial statute governing the selection of jurors requires that only the first six names on the previous grand jury list shall be omitted and that six new selections be made to fill their places, the drawing of twelve new men as grand jurors is ineffectual to constitute a grand jury, and an indictment brought in by them while assuming to act as a grand jury must be quashed on motion. R. v. McDougall (1904), 8 C. C. C., 283.

An objection that a member of the grand jury by which the indictment was found, was not indifferent as between the Crown and the accused because of an alleged interest in the subject-matter of the prosecution and was therefore disqualified from acting as a grand juror in respect of such indictment, is not an objection to the "constitution" of the grand jury which must be raised by motion to quash the indictment. R. v. Hayes (1903), 9 C. C. C., 101.

The presence in the grand jury room of an unauthorized person, summoned as a grand juror, but not impannelled, during the deliberations of the grand jury will not invalidate an indictment then under consideration, if such person was excluded from the grand jury before the presentment unless it be shewn that the accused was thereby prejudiced. R. v. Kelly (1905), 9 C. C. C., 130.

Where eleven grand jurors answered their names when the roll was first called, but ten only were empanelled and sworn (one having failed to answer on the second calling), the grand jury is properly constituted in a Province where the panel is not more than thirteen. R. v. Fouquet (1905), 10 C. C. C., 255.

900. Pleas.—When the accused is called upon to plead he may plead either guilty or not guilty, or such special plea as is in this Part subsequently provided for.

2. **Refusal to plead.**—If the accused wilfully refuses to plead, or will not answer directly, the court may order the proper officer to enter a plea of not guilty. 55-56 V., c. 29, s. 657.

The defendant has the right to raise the question of jurisdiction under a plea of not guilty. R. v. Hogle (1896), 5 C. C. C., 53.

See section 967 as to inability to plead by reason of insanity.

901. Time to plead to indictment.—No person prosecuted shall be entitled as of right to traverse or postpone the trial of any indictment preferred against him in any court, or to imparl, or to have time allowed him to plead or demur to any such indictment.

2. **Allowing further time to plead or demur.—Bail.**—If the court before which any person is so indicted upon the application of such person or otherwise, is of opinion that he ought to be allowed a further time to plead or demur or to prepare for his defence, or otherwise, such court may grant such further time and may adjourn the trial of such person to a future time in the sittings of the court, or to the next or any subsequent session or sittings of the court, and upon such terms, as to bail or otherwise, as to the court seem meet, and may, in the case of adjournment to another session or sittings, respite the recognizances of the prosecutor and witnesses accordingly.

3. **Witnesses to attend.**—In such case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session or sittings without entering into any fresh recognizances for that purpose. 55-56 V., c. 29, s. 630.

An application to postpone a trial by jury in consequence of the absence of material witnesses must be supported by special affidavit shewing that the witnesses are material. R. v. Dougall (1874), 18 L. C. Jur., 85.

If the application is made on the ground of the absence of a material witness, the judge will require an affidavit stating the points which the witness is expected to prove, in order to form a judgment whether the witness is a material one or not. R. v. Savage, 1 C. & K., 75.

In general, a trial will not be postponed to the next assizes before a bill is found. R. v. Heeson (1878), 14 Cox C. C., 40.

In no instance will a trial be put off on account of the absence of witnesses to character. R. v. Jones (1806), 8 East, 34.

Where the prisoner applies to postpone the trial, he will be remanded

and detained in custody till the next assizes or sessions, or will be admitted to bail, but he is never required to pay the costs of the prosecutor. R. v. Hunter, 3 C. & P., 591.

Where the application is by the prosecutor, the court in its discretion will either detain the prisoner in custody, or admit him to bail, or discharge him on his own recognizances. R. v. Beardmore (1836), 7 C. & P., 497.

See also R. v. Langhurst (1866), 10 Cox C. C., 353; R. v. Flanagan (1884), 15 Cox C. C., 403; R. v. Fitzgerald (1843), 1 C. & K., 201; R. v. Chapman (1838), 8 C. & P., 558; R. v. Nicholas (1846), 2 C. & K., 246; R. v. Taylor (1882), 15 Cox C. C., 8.

902. Time to plead in Ontario.—If any person is prosecuted in any division of the High Court of justice for Ontario for any indictable offence, by information there filed, or by indictment there found or removed into such court, and appears therein in term time in person, or, in case of a corporation, by attorney, to answer to such information or indictment, such defendant, upon being charged therewith, shall not imparl to a following term, but shall plead or demur thereto within four days from the time of his appearance; and in default of his pleading or demurring within four days as aforesaid judgment may be entered against such defendant for want of a plea. 55-56 V., c. 29, s. 757.

903. When defendant appears by attorney.—Allowing further time.—If such defendant appears to such information or indictment by attorney, he shall not imparl to a following term, but a rule, requiring him to plead, may forthwith be given and served, and a plea to such information or indictment may be enforced, or judgment in default may be entered in the same manner as might have been done formerly in cases in which the defendant had appeared to such information or indictment by attorney in a previous term; but the court, or any judge thereof, upon sufficient cause shown for that purpose, may allow further time for such defendant to plead or demur to such information or indictment. 55-56 V., c. 29, s. 758.

904. Delay in prosecution instituted by Attorney General of Ontario.—Remedy of accused.—If any prosecution for an indictable offence, instituted by the Attorney General for Ontario in the said court, is not brought to trial within twelve months next after the plea of not guilty has been pleaded thereto, the court in which such prosecution is depending, upon application made on behalf of any defendant in such prosecution, of which application twenty days' previous notice shall be given to such Attorney General, may make an order authorizing such defendant to bring on the trial of such prosecution; and thereupon

such defendant may bring on such trial accordingly unless a *nolle prosequi* is entered to such prosecution. 55-56 V., c. 29, s. 759.

905. Special pleas.—The following special pleas and no others may be pleaded according to the provisions hereinafter contained, that is to say, a plea of *autrefois acquit*, a plea of *autrefois convict*, a plea of pardon, and such pleas in cases of defamatory libel as are hereinafter mentioned.

2. **Not guilty.**—All other grounds of defence may be relied on under the plea of not guilty. 55-56 V., c. 29, s. 631.

Where two persons are jointly indicted for murder and one pleads guilty and the other not guilty, and the trial upon the latter plea results in an acquittal, leave should be granted the other defendant to change his plea of guilty to one of not guilty, if the circumstances of the case are such that the verdict of acquittal already given in respect of the one would be absolutely inconsistent with the guilt of the other who had pleaded guilty. R. v. Herbert (1903), 6 C. C. C., 214.

In order to sustain a plea of *autrefois convict* or *autrefois acquit*, it must be proved that the accused was previously convicted or acquitted of the same offence as that with which he is charged in the indictment to which he so pleads, or that he was either convicted or acquitted of an offence of which he might be convicted upon the indictment in question. In such a case, it is necessary to consider whether the evidence required to maintain the second indictment would have sufficed for a conviction on the former one. R. v. Miles (1890), L. R., 24 Q. B. D., 423.

But the accused must actually have been put in jeopardy upon the former occasion so pleaded, and there must therefore have been an actual conviction or acquittal after trial. Where a coroner's jury has returned a verdict of accidental death, the defendant, subsequently indicted for homicide, cannot plead *autrefois acquit*, because the coroner's jury returned such a verdict. R. v. Labelle (1892), 16 L. N., 187.

The previous conviction or acquittal must have been valid, but if the defect in the indictment was such as to have been cured by amendment, whether it was or not, a previous acquittal or conviction thereunder would support a plea of *autrefois acquit*, or *autrefois convict*. A person can plead *autrefois acquit* or *autrefois convict*, although the indictment to which he so pleads is one against him separately, whilst in the one to which he thus refers he was indicted jointly with others. R. v. Dann (1835), 1 Moody C. C., 424.

And proof of previous conviction or acquittal by a competent court of a foreign country will support a plea of *autrefois acquit* or *autrefois convict*. R. v. Hutchinson (1775), 1 Leach, 160.

When once a verdict has been rendered in favor of the defendant upon a plea of *autrefois acquit* or *autrefois convict*, it cannot be set aside, although the court is of the opinion that it is clearly against the weight of evidence. R. v. Lea (1837), 2 Moody C. C., 9.

Justices of the Peace have no power on a preliminary investigation before them of a charge of unlawfully wounding, to reduce the charge to one of common assault, over which they would have summary jurisdiction; and a conviction recorded by the justices in such a case upon a plea of guilty to the charge as reduced, is not a bar to an indictment for unlawfully wounding, based upon the same state of facts, and does not support a plea of *autrefois convict*. R. v. Lee (1897), 2 C. C. C., 233; Miller v. Lea (1898), 2 C. C. C., 282.

Where a person has been acquitted by a court of competent jurisdiction, the acquittal is a bar to all further proceedings to punish him for the same matter, although a plea of *autrefois acquit* may not be allowed because of the different nature of the charges. R. v. Quinn (1905), 10 C. C. C., 412.

An appeal lies to the Court of King's Bench in Quebec from an order of a justice of the peace, dismissing an information or complaint on a plea of *autrefois convict*. R. v. Bombardier (1905), 11 C. C. C., 216.

A conviction by a magistrate or magistrates upon an information or complaint charging an offence for which a previous information against the same defendant has been made before another magistrate, and while such previous information is pending, is null and void, and will not avail in support of a plea of *autrefois convict* to the first complaint. R. v. Bombardier, supra.

A person tried and acquitted in any criminal court is entitled to a copy of the record of such acquittal and of the indictment without the fiat of or intervention by the Attorney-General of the province, and a mandamus will lie to compel the delivery of certified copies or an exemplification thereof upon tender of the proper fees. Attorney-General of Ontario v. Scully (1902), 6 C. C. C., 167.

906. Special pleas together.—The pleas of *autrefois acquit*, *autrefois convict*, and pardon may be pleaded together, and if pleaded shall be disposed of before the accused is called on to plead further.

2. **Not guilty afterwards.**—If every such plea is disposed of against the accused he shall be allowed to plead not guilty.

3. **Statement sufficient.**—In any plea of *autrefois acquit* or *autrefois convict* it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count or counts to which such plea is pleaded, indicating the time and place of such acquittal, or conviction. 55-56 V., c. 29, s. 631.

See note to preceding section.

907. Issue on pleas of autrefois acquit and autrefois convict.—On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict* to any count or counts, if it appear that the matter on which the accused was given in charge on the former trial is the same in whole or in part as that on which it is proposed to give him in charge, and that he might on the former trial, if all proper amendments had been made which might then have been made, have been convicted of all the offences of which he may be convicted on the count or counts to which such plea is pleaded, the court shall give judgment that he be discharged from such count or counts.

2. **What determines.**—If it appear that the accused might on the former trial have been convicted of any offence of which he might be convicted on the count or counts to which such plea

is pleaded, but that he may be convicted on any such count or counts of some offence or offences of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on any such count or counts of any offence of which he might have been convicted on the former trial, but that he shall plead over as to the other offence or offences charged. 55-56 V., c. 29, s. 631.

See note to section 905.

908. Evidence to prove identity of charges.—On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict* the depositions transmitted to the court on the former trial, together with the judge's and official stenographer's notes if available, and the depositions transmitted to the court on the subsequent charge, shall be admissible in evidence to prove or disprove the identity of the charges. 55-56 V., c. 29, s. 632.

909. Indictment charging substantially same offence with circumstances of aggravation.—When an indictment charges substantially the same offence as that charged in the indictment on which the accused was given in charge on a former trial, but adds a statement of intention or circumstances of aggravation tending if proved to increase the punishment, the previous acquittal or conviction shall be a bar to such subsequent indictment.

2. **Murder.—Manslaughter.**—A previous conviction or acquittal on an indictment for murder shall be a bar to a second indictment for the same homicide charging it as manslaughter; and a previous conviction or acquittal on an indictment for manslaughter shall be a bar to a second indictment for the same homicide charging it as murder. 55-56 V., c. 29, s. 633.

910. Plea of justification in case of libel.—Every one accused of publishing a defamatory libel may plead that the defamatory matter published by him was true, and that it was for the public benefit that the matters charged should be published in the manner and at the time when they were published.

2. **In two senses or in either sense.**—Such plea may justify the defamatory matter in the sense specified, if any, in the count, or in the sense which the defamatory matter bears without any such specification; or separate pleas justifying the defamatory matter in each sense may be pleaded separately to each as if two libels had been charged in separate counts.

3. **Plea in writing.**—Every such plea must be in writing, and

must set forth the particular fact or facts by reason of which it was for the public good that such matters should be so published.

4. **Reply.**—The prosecutor may reply generally denying the truth thereof. 55-56 V., c. 29, s. 634; 56 V., c. 32, s. 1.

A plea of justification to an indictment for defamatory libel must allege that the defamatory matter published is true and that it was for the public benefit that the alleged libel was published. R. v. Grenier (1897), 1 C. C. C., 55.

Such plea must set forth concisely the particular facts by reason of which its publication was for the public good, but it must not contain the evidence by which it is proposed to prove such facts, nor any statements purely of comment or argument. A plea of justification, which embodies a number of letters which it is proposed to use as evidence, and contains paragraphs of which the matter consists merely of comments and arguments, is irregular and illegal. The plea itself should be rejected from the record, or the illegal averment should be struck out, and the defendant allowed to plead anew. R. v. Grenier, supra.

The accused had pleaded justification, and after the pleadings had been closed, and at the trial, motion was made on his behalf for a commission to take the evidence of witnesses in England in support of his plea of justification. The Crown objected that the parties having come down to trial it was too late to make such a motion. Held, that the accused was entitled to take every moment to consider whether he would put in a plea of justification, and that as the evidence proposed to be taken under the commission was only as to that plea which had just been entered, the application could not have been made before. R. v. Nicol (1898), 34 C. L. J., 475.

To an indictment for libel, the language of which was couched in general terms, the defendant pleaded that the words and statements complained of in the indictment were true in substance and in fact, and that it was for the public benefit, etc. It was held that the plea was insufficient because it did not set out the particular facts upon which the defendant intended to rely. R. v. Creighton (1890), 19 Ont. R., 339.

In a prosecution for an alleged defamatory libel contained in a newspaper article, condemning an employer's dismissal of employees belonging to a trade union and charging that the distribution of certain gratuities by the employer to his employees was impelled by motives of selfishness on his part and was for the purpose of winning public approval and favorable public comment through press notices thereof, a plea of justification will not be struck out on the objection that the facts therein alleged do not show that it was for the public benefit that the publication should be made, if such plea contains a charge that the press notices favorable to the complainant were published at his instance. R. v. Brazeau (1899), 3 C. C. C., 89.

If the complainant in a prosecution for defamatory libel has himself called public attention to the subject matter of the alleged libel by obtaining the publication of newspaper articles commending his conduct therein, he thereby invites public criticism thereof and cannot object that the answer to his own articles is not a publication in the public interest. R. v. Brazeau, supra.

Wherever a man calls public attention to his own grievances or those of his class, whether by letters in a newspaper, by speeches at public meetings, or by the publication of pamphlets, he must expect to have his assertions challenged, the existence of his grievances denied, and himself ridiculed and assailed. Odgers on Libel, 3rd ed., 57.

Comments, however severe, upon the advertisements of a tradesman are

not libellous if the jury is of opinion that they are fair comment, not wholly undeserved, upon a matter to which public attention was expressly invited by the tradesman himself. Paris v. Levy (1860), 9 C. B., N. S., 342.

It is a question for the judge, and not for the jury, whether a particular topic was or was not a matter of public interest. (Coleridge, C. J.). Weldon v. Johnson (1884), in Odgers on Libel, 3rd ed., 46.

As to what are matters of public interest, see 3 C. C. C., at p. 93.

✓ **911. Plea of justification necessary to try truth.**—The truth of the matters charged in an alleged libel shall in no case be inquired into without the plea of justification aforesaid unless the accused is put upon his trial upon any indictment or information charging him with publishing the libel knowing the same to be false, in which case evidence of the truth may be given in order to negative the allegation that the accused knew the libel to be false.

2. **Not guilty in addition.**—The accused may, in addition to such plea, plead not guilty and such pleas shall be inquired of together.

3. **Effect of plea on punishment.**—If, when such plea of justification is pleaded, the accused is convicted, the court may, in pronouncing sentence, consider whether his guilt is aggravated or mitigated by the plea. 55-56 V., c. 29, s. 634.

See note to preceding section.

912. Publication by order of a legislative body.—Certificate of speaker or clerk.—Every person against whom any criminal proceedings are commenced or prosecuted in any manner for or on account of or in respect of the publication of any report, paper, votes or proceedings, by such person or by his servant, by order or under the authority of any legislative council, legislative assembly or house of assembly, may submit to the court in which such proceedings are so commenced or prosecuted, or before any judge of the same, upon twenty-four hours' notice of his intention so to do, to the prosecutor in such proceedings, or to his attorney or solicitor, a certificate under the hand of the speaker or clerk of such legislatice council, legislative assembly or house of assembly, as the case may be, verified by affidavit, stating that the report, paper, votes or proceedings, as the case may be, in respect whereof such criminal proceedings are commenced or prosecuted, was or were published by such person, or by his servant, by order or under the authority of the legislative council, legislative assembly or house of assembly, as the case may be.

2. **Stay of proceedings and dismissal.**—Such court or judge shall, upon such certificate being so submitted, immediately stay such criminal proceedings, and the same shall thereupon be deemed finally ended, determined and superseded. R.S., c. 163, s. 6.

913. Copy of report may be laid before the court.—Stay of proceedings and dismissal.—In any criminal prosecution for or on account or in respect of the publication of any copy of such report, paper, votes or proceedings, the defendant may submit to the court or judge before which or whom such prosecution is pending a copy of such report, paper, votes or proceedings, verified by affidavit, and the court or judge shall immediately stay such criminal prosecution, and the same shall thereupon be deemed to be finally ended, determined and superseded. R.S., c. 163, s. 7.

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914. Form of record of conviction or acquittal.—In making up the record of any conviction or acquittal on any indictment it shall be sufficient to copy the indictment with the plea pleaded thereto, without any formal caption or heading.

2. **Entry of record.**—The statement of the arraignment and the proceedings subsequent thereto shall be entered of record in the same manner as heretofore, subject to any such alterations in the forms of such entry as are, from time to time, prescribed by any rule or rules of the superior courts of criminal jurisdiction respectively.

3. **Inferior courts.**—Such rules shall also apply to such inferior courts of criminal jurisdiction as are therein designated. 55-56 V., c. 29, s. 726.

915. Form of record in case of amendment.—If it becomes necessary to draw up a formal record, in any case in which an amendment has been made, such record shall be drawn up in the form in which the indictment remained after the amendment, without taking any notice of the fact of such amendment having been made. 55-56 V., c. 29, s. 725.

PROCEEDINGS IN CASE OF CORPORATIONS.

916. Corporations may appear by attorney.—Every corporation against which a bill of indictment is found at any court having criminal jurisdiction shall appear by attorney in the court in which such indictment is found and plead or demur thereto. 55-56 V., c. 29, s. 635.

Proceedings under a charge against a corporation of selling goods to which a false trade description was applied should be instituted by indictment under Cr. Code secs. 635 to 639 (now secs. 916 to 920), and not by a preliminary enquiry before a magistrate. R. v. T. Eaton Co., Ltd., (1908), 2 C. C. C., 252.

A justice of the peace cannot compel a corporation to appear before him in respect of an indictable offence, nor can he bind the corporation

over to appear and answer to an indictment; and he has no jurisdiction to bind over the prosecutor to present an indictment against the corporation. Chapman v. City of London (1890), 19 Ont. R., 33.

The procedure of the Criminal Code of Canada as to summary convictions applies as well to corporations as to natural persons. The fact that a portion of the remedy provided for the recovery of the penalty and costs is personal imprisonment, does not prevent the application of the summary procedure in other respects to corporations. R. v. Toronto Railway Co. (1898), 2 C. C. C., 471.

917. Certiorari not required.—Distringas not necessary.—No writ of *certiorari* shall be necessary to remove any such indictment into any superior court with the view of compelling the defendant to plead thereto; nor shall it be necessary to issue any writ of *distringas*, or other process, to compel the defendant to appear and plead to such indictment. 55-56 V., c. 29, s. 636.

918. Notice to corporation.—The prosecutor, when any such indictment is found against a corporation, or the clerk of the court when such indictment is founded on a presentment of the grand jury, may cause a notice thereof to be served on the mayor or chief officer of such corporation, or upon the clerk or secretary thereof, stating the nature and purport of such indictment, and that, unless such corporation appears and pleads thereto in two days after the service of such notice, a plea of not guilty will be entered thereto for the defendant by the court, and that the trial thereof will be proceeded with in like manner as if the said corporation had appeared and pleaded thereto. 55-56 V., c. 29, s. 637.

Notice of a summons by justices under the summary convictions clauses of the Criminal Code may be given in a manner similar to a notice of indictment under Cr. Code, sec. 637 (now 918). R. v. Toronto Railway Co. (1898), 2 C. C. C., 471.

In the Province of Alberta which has no grand jury system, a corporation may be compelled to answer to an indictable offence (ex. gr. conducting a lottery scheme) by a formal written charge in lieu of an indictment, such charge being laid by the Attorney-General or by his direction or with the consent or order of a judge and notice thereof being served on the corporation under sec. 918 of the Code. R. v. Standard Soap Co. (1907), 12 C. C. C., 290.

919. Proceeding on default.—If such corporation does not appear in the court in which the indictment has been found, and plead or demur thereto within the time specified in the said notice, the judge presiding at such court may, on proof to him by affidavit of the due service of such notice, order the clerk or proper officer of the court to enter a plea of not guilty on behalf of such corporation, and such plea shall have the same force and effect

as if such corporation had appeared by its attorney and pleaded such plea. 55-56 V., c. 29, s. 638.

920. Trial may proceed in absence of defendant.—The court may, whether such corporation appears and pleads to the indictment, or a plea of not guilty is entered by order of the court, proceed with the trial of the indictment in the absence of the defendant in the same manner as if the corporation had appeared at the trial and defended the same, and in case of conviction, may award such judgment and take such other and subsequent proceedings to enforce the same as are applicable to convictions against corporations. 55-56 V., c. 29, s. 639.

There is no power under Code sec. 639 (now sec 920) or otherwise to impose a fine or any other punishment, in lieu of imprisonment, for the offence of manslaughter, and there is consequently no judgment or sentence applicable to a conviction of a corporation for that offence. R. v. Great West Laundry Co. (1900), 3 C. C. C., 514.

Although a corporation cannot be guilty of manslaughter, it may be indicted, under Cr. Code sec. 252 (now sec. 284), for having caused grievous bodily injury by omitting to maintain in a safe condition a bridge or structure which it was its duty to so maintain, and this notwithstanding that death ensued at once to the person sustaining the grievous bodily injury. A fine is the punishment which must be substituted under sec. 639 (now sec. 920) in the case of a corporation, in lieu of the imprisonment mentioned in sec. 252 (284), and the amount is in the discretion of the Court. R. v. Union Colliery Co. (1900), 3 C. C. C., 523.

See also Pharmaceutical Society of G. B. v. London & Prov. Supply Ass. (1880), L. R., 5 A. C., 869; R. v. Birmingham & Gloucester Ry. Co. (1842), L. R., 3 Q. B., 223; R. v. Great North of England Ry. Co. (1846), L. R., 9 Q. B., 315; R. v. Pocock (1851), L. R., 17 Q. B., 34.

JURIES.

921. Qualification of juror.—Every person qualified and summoned as a grand or petit juror, according to the laws in force for the time being in any province of Canada shall be duly qualified to serve as such juror in criminal cases in that province.

2. **Seven may find bill.**—Seven grand jurors, instead of twelve, may find a true bill in any province where the panel of grand jurors is not more than thirteen. 55-56 V., c. 29, s. 662; 57-58 V., c. 57, s.1.

It is within the power of a Provincial Legislature to fix the number of the grand jurors who should compose the panel, that being part of the organization or constitution of the Court. But a Provincial Legislature has no power to fix the number of grand jurors necessary to find a good bill of indictment, that being a matter of criminal procedure and exclusively within the powers of the Dominion Parliament. R. v. Cox (1898), 2 C. C. C., 207.

In provinces where the grand jury has been reduced to thirteen jurors or less, the failure of some of the summoned jurors to attend will not invalidate a bill to which at least seven of the jurors in attendance agree. R. v. Girard (1898), 2 C. C. C., 216; R. v. Poirier (1898), R. J. Q., 7 Q. B., 483.

The provincial law regarding the qualification of jurors made applicable by Code sec. 662 (now sec. 921) to criminal cases includes a provincial enactment which provides that jurors' lists shall not be open for inspection until six days before the trial sittings. Chantler v. Attorney-General of Ontario (1905), 9 C. C. C., 465.

A person of the name or a similar name to that of a qualified juror and who is served in mistake for the qualified juror, but who is not himself upon the list of persons from which alone jurors may properly be summoned, is not a qualified juror under Cr. Code sec. 921, and his acting as such is a good ground for ordering a new trial. R. v. McCraw (1906), 12 C. C. C., 253.

922. Jury de medietate linguae abolished.—No alien shall be entitled to be tried by a jury *de medietate linguae*, but shall be tried as if he was a natural born subject. 55-56 V., c. 29, s. 663.

923. Mixed juries in Quebec.—In those districts in the province of Quebec in which the sheriff is required by law to return a panel of petit jurors composed, one-half of persons speaking the English language, and one-half of persons speaking the French language, he shall in his return specify separately those jurors whom he returns as speaking the English language, and those whom he returns as speaking the French language respectively; and the names of the jurors so summoned shall be called alternately from such lists. 55-56 V., c. 29, s. 664.

A prisoner arraigned for trial in Quebec has the right to claim a jury composed for one-half at least of persons speaking his language if French or English. After having claimed a mixed jury and the recording of the order therefor by the Court, the prisoner has no absolute right to relinquish such claim and to have the order for a mixed jury superseded, but revocation may be ordered on such an application in the discretion of the Court. R. v. Sheehan (1897), 1 C. C. C., 402.

The right to a mixed jury in Quebec conferred by 27-28 Vic. 41 (Prov. of Canada), in criminal cases is essentially a matter of criminal procedure and as such within the legislative authority of the Federal Parliament only, and not within the scope of provincial legislation under the heading of "the constitution and organization of the Courts," B. N. A. Act 92 (14). A statute of the legislature of the Province of Quebec purporting to repeal the Act conferring such right is *ultra vires* so far as such right to a mixed jury is sought to be affected. R. v. Sheehan, supra; R. v. Yancey (1899), 2 C. C. C., 320.

The prosecuted may, upon arraignment, demand a jury composed for the one-half at least of persons skilled in "the language of the defence", whether French or English; but this does not give the accused an option to choose either language as the language of the defence, nor to have at least one-half of the jurors drawn from those skilled in the language in which counsel for the accused proposes to conduct the defence. The "language of the defence" in that connection means the language habitually spoken by the accused. R. v. Yancey, supra.

924. Mixed juries in Manitoba.—Whenever any person who is arraigned before the Court of King's Bench for Manitoba demands a jury composed, for the one-half at least, of persons skilled in the language of the defence, if such language is either English or French, he shall be tried by a jury composed for the one-half at least of the persons whose names stand first in succession upon the general panel and who, on appearing and not being lawfully challenged, are found, in the judgment of the court, to be skilled in the language of the defence.

2. **When panel exhausted, additional jurors.**—Whenever, from the number of challenges or any other cause, there is in any such case a deficiency of persons skilled in the language of the defence the court shall fix another day for the trial of such case, and the sheriff shall supply the deficiency by summoning, for the day so fixed, such additional number of jurors skilled in the language of the defence as the court orders, and as are found inscribed next in succession on the list of petit jurors. 55-56 V., c. 29, s. 665.

The subsequent discovery that one of the jurors sworn did not thoroughly understand the English language is not a ground for a new trial. R. v. Earl (1894), 10 Man. R., 303.

925. Challenging the array.—Either the accused or the prosecutor may challenge the array on the ground of partiality, fraud, or wilful misconduct on the part of the sheriff or his deputies by whom the panel was returned, but on no other ground.

2. **In writing.**—Such challenge shall be by way of objection in writing, and shall state that the person returning the panel was partial, or was fraudulent, or wilfully misconducted himself, as the case may be.

3. **Objection in writing.**—Such objection may be in form 69, or to the like effect. 55-56 V., c. 29, s. 666.

The challenge should state the grounds upon which the objection is made, and should not be in general terms only. R. v. Hughes (1843), 1 C. & K., 235.

926. Trial of ground of challenge.—If partiality, fraud or wilful misconduct, as the case may be, is denied, the court shall appoint any two indifferent persons to try whether the alleged ground of challenge is true or not.

2. **New panel when.**—If the triers find that the alleged ground of challenge is true in fact, or if the party who has not challenged the array admits that the ground of challenge is true in fact, the court shall direct a new panel to be returned. 55-56 V., c. 29, s. 666.

927. Names of jurors on cards.—The name of each juror on a panel returned, with his number on the panel and the place of his abode, shall be written on a distinct piece of card, and all such pieces of card shall be as nearly as may be of equal size.

2. **Put by officers in box.**—The cards shall be delivered to the officer of the court by the sheriff or other officer returning the panel, and shall, under the direction and care of the officer of the court, be put together in a box to be provided for that purpose and shall be shaken together.

3. **To be drawn by officer of the court.**—If the array is not challenged or if the triers find against the challenge, the officer of the court shall in open court draw out the said cards, one after another, and shall call out the name and number upon each such card as it is drawn, until such a number of persons have answered to their names as in the opinion of the court will probably be sufficient to provide a full jury after allowing for challenges of jurors and directions to stand by.

4. **Each juror to be sworn.**—The officer of the court shall then proceed to swear the jury, each juror being called to swear in the order in which his name is so drawn, until, after subtracting all challenges allowed and jurors directed to stand by, twelve jurors are sworn.

5. **Further names to be drawn when.**—If the number so answering is not sufficient to provide a full jury such officer shall proceed to draw further names from the box, and call the same in manner aforesaid, until, after challenges allowed and directions to stand by, twelve jurors are sworn. 55-56 V., c. 29, s. 667.

The fact that the jurors were set aside, rejected or sworn as they were drawn, without first calling the full number required for a jury, does not invalidate the trial, nor constitute a deprivation of the full right of challenge. R. v. Weir (1899), 3 C. C. C., 262.

928. Calling the jurors who have stood by.—Proviso.—Other jurors becoming available.—If, by challenges and directions to stand by, the panel is exhausted without leaving a sufficient number to form a jury, those who have been directed to stand by shall be again called in the order in which they were drawn, and shall be sworn, unless challenged by the accused, or unless the prosecutor challenges them and shows cause why they should not be sworn: Provided that if before any such juror is sworn other jurymen in the panel become available the prosecutor may require the names of such jurymen to be put into and drawn from the box in the manner hereinbefore prescribed, and such jurors shall be sworn, challenged or ordered to stand by, as the

case may be, before the jurors originally ordered to stand by are again called. 55-56 V., c. 29, s. 667.

A peremptory challenge of a juror when once taken must be counted against the party making it, and cannot be withdrawn when the panel is being called over a second time. R. v. Lalonde (1898), 2 C. C. C., 188.

When the accused does not challenge, the Crown may either challenge peremptorily, or may challenge for cause, or direct the juror to stand by. The direction to stand by is really a challenge by the Crown for cause without it being necessary to shew and establish the ground on which it is founded until the panel has been exhausted without twelve jurors having been accepted and sworn. It is in fact a deferred challenge for cause; and the term "to stand by" means that the Crown shall have time to shew the cause of challenge. R. v. Barsalou (1901), 4 C. C. C., 343; R. v. Leach, 9 C. & P., 499.

The Crown has not the right to direct jurors to stand by when they are called a second time, after the panel has been exhausted by challenges and directions to stand by. R. v. Boyd (1896), 4 C. C. C., 219.

A direction to a juror "to stand by" at the instance of the Crown is in substance a deferred challenge for cause, and cannot be made after the juror has, by direction of the Clerk of Assize, taken the book to be sworn. R. v. Barsalou (1901), 4 C. C. C., 343.

929. Who shall be the jury.—Return of names to the box.—The twelve men who in manner aforesaid are ultimately drawn and sworn shall be the jury to try the issues on the indictment, and the names of the men so drawn and sworn shall be kept apart by themselves until such jury give in their verdict or until they are discharged; and then the names shall be returned to the box, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried.

2. **Same jury may try another issue by consent.**—If the prosecutor and accused do not object thereto, the court may try any issue with the same jury that has previously tried or been drawn to try any other issue, without their names being returned to the box and redrawn, or if the parties, or either of them, object to some one or more of the jurors forming such jury, or the court excuses any one or more of them, then the court may order such persons to withdraw, and may direct the requisite number of names to make up a complete jury to be drawn, and the persons whose names are so drawn shall be sworn.

3. **Sections directory.**—An omission to follow the directions of this or the two last preceding sections shall not affect the validity of the proceedings. 55-56 V., c. 29, s. 667.

930. Ground of challenge, names not on panel, tried upon voir dire.—If the ground of challenge is that the jurors' names do not appear on the panel, the issue shall be tried by the

court on the *voir dire* by the inspection of the panel, and such other evidence as the court thinks fit to receive. 55-56 V., c. 29, s. 668.

931. Trial of challenge upon other grounds.—If the ground of challenge be other than as last aforesaid, the two jurors last sworn, or if no jurors have then been sworn, then two persons present whom the court may appoint for that purpose shall be sworn to try whether the juror objected to stands indifferent between the King and the accused, or has been convicted as hereinafter specified or is an alien, as the case may be.

2. **Juror sworn.**—If the court or the triers find against the challenge, the juror shall be sworn.

3. **Not sworn.**—If they find for the challenge he shall not be sworn.

4. **If triers do not agree.**—If, after what the court considers a reasonable time, the triers are unable to agree, the court may discharge them from giving a verdict, and may direct other persons to be sworn in their place. 55-56 V., c. 29, s. 668.

Where a juror has been challenged for favour the finding of the triers as to his competency is conclusive, although the accused and his counsel were not then aware of remarks alleged to have been made by the juror which would tend to shew a bias against the accused. R. v. Carlin (1903), 6 C. C. C., 365.

932. Peremptory challenges by accused.—Every one indicted for treason or for any offence punishable with death is entitled to challenge twenty jurors peremptorily.

2. **Twelve in certain cases.**—Every one indicted for any offence other than treason, or an offence punishable with death, for which he may be sentenced to imprisonment for more than five years, is entitled to challenge twelve jurors peremptorily.

3. **Four in other cases.**—Every one indicted for any other offence is entitled to challenge four jurors peremptorily. 55-56 V., c. 29, s. 668.

The challenge must be before the juryman is sworn, and he cannot be challenged afterwards except by consent. R. v. Mellor (1858), 4 Jur. N. S., 5, 214.

The rule is that challenges must be made as the jurors come to the book, and before they are sworn. The moment the oath is begun it is too late, and the oath is begun by the juror taking the book, having been directed by the officer of the court to do so. If the juror takes the book without authority, neither party wishing to challenge is to be prejudiced thereby. R. v. Frost (1839), 9 C. & P., 129, 137.

A peremptory challenge of a juror when once taken must be counted against the party making it, and cannot be withdrawn when the panel is being called over a second time. R. v. Lalonde (1898), 2 C. C. C., 188.

On an indictment for unlawfully wounding, in which is included a separate count for assault, the accused is not entitled to claim the total number of peremptory challenges of jurors as he would have if the charges were contained in separate indictments, but is limited to the largest number allowed in respect of any single count. R. v. Turpin (1904), 8 C. C. C., 59.

933. By Crown.—Standing aside.—The Crown shall have power to challenge four jurors peremptorily, and may direct any number of jurors not peremptorily challenged by the accused to stand by until all the jurors have been called who are available for the purpose of trying that indictment.

2. **Accused challenges first if required.**—The accused may be called upon to declare whether he challenges any jurors peremptorily or otherwise, before the prosecutor is called upon to declare whether he requires such juror to stand by, or challenges him either for cause or peremptorily. 55-56 V., c. 29, s. 668.

On the demand of the Crown any juror may be directed to "stand by," the consideration of the challenge being postponed until it can be seen whether a full jury can be made without him. The Crown is not bound to show any cause of challenge until the panel has been gone through and exhausted, so that there are no more jurors in the panel whose attendance can be procured. Mansell v. R. (1857), 8 E. & B., 54.

Where several persons are jointly indicted and tried the Crown is restricted to the number of peremptory challenges allowed on the trial of one person. R. v. Lalonde (1898), 2 C. C. C., 188.

934. No right in libel to stand aside by the Crown.—The right of the Crown to cause any juror to stand aside until the panel has been gone through shall not be exercised on the trial of any indictment or information by a private prosecutor for the publication of a defamatory libel. 55-56 V., c. 29, s. 669.

The words of this section include all cases of defamatory libels upon individuals as distinguished from seditious or blasphemous libels; and in all cases of indictment for defamatory libels within the statute, the right of the Crown which previously existed to cause jurors to stand aside is taken away. R. v. Patteson (1875), 36 U. C. Q. B., 129.

The "private prosecutor," as the term is used here, means the person who puts the criminal law in motion; and if there is a criminal proceeding to which the term private prosecutor is more applicable than another, it is in the case of a defamatory libel, a prosecution, as said by Lord Campbell, uniformly instituted by the party injured. R. v. Patteson, supra.

The fact that the Attorney-General or his representative conducts the prosecution in respect of a private defamatory libel does not make it a public proceeding or withdraw it from the operation of this section. R. v. Patteson, supra.

935. Challenges for cause.—Every prosecutor and every accused person is entitled to any number of challenges on the ground,—

(a) that any juror's name does not appear in the panel: Provided that no misnomer or misdescription shall be a ground of challenge if it appears to the court that the description given in the panel sufficiently designates the person referred to; or,

(b) that any juror is not indifferent between the King and the accused; or,

(c) that any juror has been convicted of any offence for which he was sentenced to death or to any term of imprisonment with hard labour or exceeding twelve months; or

(d) that any juror is an alien.

2. **No other ground.**—No other ground of challenge for cause than those mentioned in this section shall be allowed. 55-56 V., c. 29, s. 668.

That the juror has visited the prisoner as a friend since he has been in custody, is not a good cause of challenge for cause, on the ground of being "not indifferent" between the Crown and the accused. R. v. Geach (1840), 9 C. & P., 499.

If a defendant omit to challenge a juror on the ground that such juror entertains a hostile feeling against him, he cannot, after a verdict of guilty, ask on that ground to have the verdict quashed and for a new trial. R. v. Harris (1898), 2 C. C. C., 75.

It is a good ground of challenge of a petit juror that he was on the grand jury by which the indictment was found, the reason being that he may have been one of the twelve who found the indictment and then if he sat on the trial a criminal would be convicted by only twenty-three instead of twenty-four of his peers. R. v. Dowey (1869), 1 P. E. I., 291.

The right of a prisoner to challenge for cause, though he has not exhausted his peremptory challenges, is fully recognized; but the right of postponing the hearing and trial of that cause is discretionary with the judge. Whelan v. R. (1868), 28 U. C. Q. B., 132.

936. Challenge in writing.—If a challenge on any of the grounds aforesaid is made, the court may, in its discretion, require the party challenging to put his challenge in writing.

2. **Form.**—The challenge may be in form 70, or to the like effect.

3. **Denial.**—The other party may deny that the ground of challenge is true. 55-56 V., c. 29, s. 668.

937. Peremptory challenge in case of mixed jury.—Whenever a person accused of an offence for which he would be entitled to twenty or twelve peremptory challenges as hereinbefore provided, elects to be tried by a jury composed one-half of persons skilled in the language of the defence, under sections nine hundred and twenty-three or nine hundred and twenty-four, the number of peremptory challenges to which he is entitled shall be divided, so that he shall only have the right to challenge

one-half of such number from among the English speaking jurors, and one-half from among the French speaking jurors. 55-56 V., c. 29, s. 670.

See note to section 923.

938. Accused persons joining or severing in their challenges.—If several accused persons are jointly indicted and it is proposed to try them together, they or any of them may either join in their challenges, in which case the persons who so join shall have only as many challenges as a single person would be entitled to, or each may make his challenges in the same manner as if he were intended to be tried alone. 55-56 V., c. 29, s. 671.

Under the provisions of sections 932, 933 and 938 of the Code, each defendant has a right to the full number of his peremptory challenges; but a corresponding privilege is not given to the Crown, and therefore the Crown is restricted, in the case of the trial of several defendants jointly, to the number of peremptory challenges allowed to it in the case of the indictment of a single person. But if the joint defendants refuse to join in their challenges, the Crown has the right to try them separately, and then the Crown has its four peremptory challenges at the trial of each defendant. R. v. Lalonde (1898), 2 C. C. C., 188.

939. Panel exhausted, further jurors summoned.—Whenever after the proceedings hereinbefore provided for the panel has been exhausted, and a complete jury cannot be had by reason thereof, then, upon request made on behalf of the Crown, the court may order the sheriff or other proper officer forthwith to summon such number of persons, whether qualified jurors or not, as the court deems necessary and directs in order to make a full jury; and such jurors may, if necessary, be summoned by word of mouth.

2. **Names added to the panel.**—The names of the persons so summoned shall be added to the general panel, for the purposes of the trial, and the same proceedings shall be taken as to calling and challenging such persons and as to directing them to stand by as are hereinbefore provided for with respect to the persons named in the original panel. 55-56 V., c. 29, s. 672.

ARRAIGNMENT AND TRIAL.

940. Coroner's inquisition.—No one shall be tried upon any coroner's inquisition. 55-56 V., c. 29, s. 642.

941. Bringing prisoner up for arraignment.—If any person against whom any indictment is found is at the time confined for some other cause in the prison belonging to the jurisdiction

of the court by which he is to be tried, the court may by order in writing, without a writ of *habeas corpus*, direct the warden or gaoler of the prison or sheriff or other person having the custody of the prisoner to bring up the body of such person as often as may be required for the purposes of the trial, and such warden, gaoler, sheriff or other person shall obey such order. 55-56 V., c. 29, s. 652.

942. Right to full defence.—Every person tried for any indictable offence shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law. 55-56 V., c. 29 s. 659.

The prosecuting counsel need not call all the witnesses on the back of the indictment, but they should all be in attendance in case the prisoner should desire to call them. R. v. Thompson (1876), 13 Cox C. C., 181; R. v. Woodhead (1847), 2 C. & K., 520.

At a murder trial every person present at the transaction giving rise to the charge ought to be called by the prosecution, even though they were brought to the assizes by the other side and were not on the back of the indictment, as even if they gave different accounts the jury ought to hear their evidence and draw their own conclusions. R. v. Holden (1838), 8 C. & P., 609; R. v. Orchard (1838), 8 C. & P., 558.

One co-defendant cannot be called as a witness by another co-defendant and compelled to give evidence, but a co-defendant, may testify if he chooses to do so. R. v. Connors (1893), 5 C. C. C., 70.

An accused person has the right to have his case submitted to the jury without any comment on his failure to testify being made by the trial judge, and although such comment is afterwards withdrawn, the making of same is a substantial wrong to the accused, and if he is convicted he is entitled to a new trial by reason thereof. R. v. Coleman (1898), 2 C. C. C., 523.

On a joint indictment the evidence adduced by the witnesses called on behalf of any defendant is effective as regards the others, whether beneficially or adversely and counsel for the other defendants may therefore cross-examine such witnesses before their cross-examination by counsel for the prosecution. R. v. Barsalou (1901), 4 C. C. C., 446.

943. Presence of the accused at trial.—Every accused person shall be entitled to be present in court during the whole of his trial unless he misconducts himself by so interrupting the proceedings as to render their continuance in his presence impracticable.

2. **Permission to be out of court.**—The court may permit the accused to be out of court during the whole or any part of any trial on such terms as it thinks proper. 55-56 V., c. 29, s. 660.

Section 943 of the Code providing for the personal attendance of the accused upon his trial and for permitting the accused at his own request to be out of court during the trial, applies as well to speedy trials in the county court judges' criminal court as to trials upon indictment. R. v. McDougall (1904), 8 C. C. C., 234.

944. Prosecutor's right to sum up.—If an accused person, or any one of several accused persons being tried together, is defended by counsel, such counsel shall, at the end of the case for the prosecution, declare whether he intends to adduce evidence or not on behalf of the accused person for whom he appears; and if he does not thereupon announce his intention to adduce evidence, the counsel for the prosecution may address the jury by way of summing up.

2. **Accused may open close case and call witnesses.**—Upon every trial for an indictable offence, the counsel for the accused, or the accused if he is not defended by counsel, shall be allowed, if he thinks fit, to open the case for the defence, and after the conclusion of such opening to examine such witnesses as he thinks fit, and when all the evidence is concluded to sum up the evidence.

3. **Accused's right of reply.—Proviso.**—If no witnesses are examined for the defence the counsel for the accused, or the accused in case he is not defended by counsel, shall have the privilege of addressing the jury last, otherwise such right shall belong to the counsel for the prosecution: Provided, that the right of reply shall be always allowed to the Attorney General or Solicitor General, or to any counsel acting on behalf of either of them. 55-56 V., c. 29, s. 661.

On a joint indictment for one offence, when the evidence for the one would enure to the benefit of the other, the right to a general reply is with the prosecution, though only one defendant called witnesses in defence. R. v. Connolly & McGreevy (1894), 1 C. C. C., 468.

This is in accordance with the practice before the Code. R. v. Jordan (1839), 9 C. & P., 118.

But it would appear to be otherwise if the evidence given on behalf of one of the accused was not such as to enure to the benefit of the others. In such a case, counsel for the prosecution would first reply to the counsel of such of the accused as had called witnesses, when counsel for the accused, who had not called any witnesses, would have the privilege of addressing the jury last. R. v. Burns (1887), 16 Cox C. C., 195.

The right to reply is seldom exercised if the only evidence adduced on behalf of the accused is as to his character; but there is no doubt that even in such a case the right of reply by counsel for the prosecution exists. R. v. Dowse (1865), 4 F. & F., 492.

Where no evidence is offered for the defence, the defendant's counsel has the right to the last address to the jury notwithstanding that the prosecution is conducted by counsel acting for the Attorney-General. The "right of reply" permitted by Code sec. 944 to the Attorney-General, or to counsel acting on his behalf, is the right to again address the jury at the close of the evidence, and before the address of defendant's counsel, when the defence offers no evidence. R. v. Le Blanc (1893), 6 C. C. C., 348.

A Crown Prosecutor instructed by a provincial Attorney-General is a counsel "acting on behalf of the Attorney-General" under Code sec. 944 and has the right of reply although no witnesses are called for the defence. R. v. Martin (1905), 9 C. C. C., 371.

Crown Prosecutors in the North-West Territories acting under instructions from the Department of Justice at Ottawa are within the provision of Code sec. 944 respecting counsel acting on behalf of the Attorney-General or Solicitor-General and have the right of reply although no witnesses are examined for the defence. R. v. King (1905), 9 C. C. C., 426.

945. Continuous trial.—The trial shall proceed continuously subject to the power of the court to adjourn it.

2. **Adjournment.**—The court may adjourn the trial from day to-day, and if in its opinion the ends of justice so require, to any other day in the same sittings.

3. **Jury kept together.**—Upon every adjournment of a trial under this section, or under any other section, the court may, if it thinks fit, direct that during the adjournment the jury shall be kept together, and proper provision made for preventing the jury from holding communication with any one on the subject of the trial.

4. **In case of capital offence.**—Such direction shall be given in all cases in which the accused may upon conviction be sentenced to death.

5. **Separation in other cases.**—In other cases, if no such direction is given, the jury shal be permitted to separate.

6. **Formal adjournment unnecessary.**—No formal adjournment of the court shall hereafter be required, and no entry thereof in the Crown book shall be necessary. 55-56 V., c. 40, s. 1.

946. Jurors may have fire and refreshments.—Jurors, after having been sworn, shall be allowed at any time before giving their verdict the use of fire and light when out of court, and shall also be allowed reasonable refreshment. 55-56 V., c. 29, s. 674.

947. Libel for publishing extract from or abstract of paper published by legislative body.—Defence.—In any criminal proceeding commenced or prosecuted for publishing any extract from, or abstract of, any paper containing defamatory matter, which has been published by order or under the authority of the Senate, House of Commons or any legislative council, legislative assembly or house of assembly, such paper may be given in evidence, and it may be shown that such extract or abstract was published in good faith and without ill-will to the person defamed, and if such is the opinion of the jury, a verdict of not guilty shall be entered for the defendant. 56 V. c. 32, s. 1.

948. Evidence in case of polygamy.—In the case of any indictment under section three hundred and ten (b), (c) and (d),

no averment or proof of the method in which the sexual relationship charged was entered into, agreed to or consented to, shall be necessary in any such indictment or upon the trial of the person thereby charged; nor shall it be necessary upon such trial to prove carnal connection had or intended to be had between the persons implicated. 55-56 V., c. 29 s. 706.

949. Full offence charged, attempt proved.—When the complete commission of an offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused may be convicted of such attempt and punished accordingly. 55-56 V., c. 29, s. 711.

Section 72 states what constitutes an attempt to commit a crime.

A jury may properly bring in a verdict of an attempt to commit an assault. Leblanc v. R. (1892), 16 L. N., 187.

On an indictment for an offence of having obtained money by false pretences, the defendants cannot be convicted therefor when it is proved that by the discount of their own promissory notes they had nearly obtained a credit in account, as such a credit is not a thing capable of being stolen. But under such circumstances they might, if the evidence established an attempt to obtain the money, be convicted of such an attempt. R. v. Boyd (1896), R. J. Q., 5 Q. B., 1.

950. Attempt charged full offence proved.—When an attempt to commit an offence is charged but the evidence establishes the commission of the full offence, the accused shall not be entitled to be acquitted, but the jury may convict him of the attempt, unless the court before which such trial is had thinks fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for the complete offence.

2. **Res judicata.**—After a conviction for such attempt the accused shall not be liable to be tried again for the offence which he was charged with attempting to commit. 55-56 V., c. 29, s. 712.

Where a prisoner is indicted for an attempt to steal, and the proof establishes that the offence of larceny was actually committed, the jury may convict of the attempt, unless the Court discharges the jury and directs that the prisoner be indicted for the complete offence. R. v. Taylor (1895), 5 C. C. C., 89.

951. Offence charged, part only proved.—Every count shall be deemed divisible; and if the commission of the offence charged, as described in the enactment creating the offence or as charged in the count, includes the commission of any other offence, the person accused may be convicted of any offence so included which is proved, although the whole offence charged is

not proved; or he may be convicted of an attempt to commit any offence so included.

2. **Conviction for manslaughter on charge of murder.**—On a count charging murder, if the evidence proves manslaughter but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter, but shall not on that count find the accused guilty of any other offence. 55-56 V., c. 29, s. 713.

The essential elements of the offence of receiving stolen goods are not included in the offence of "housebreaking and theft," and a conviction for receiving stolen goods cannot be rendered on the summary trial of a person charged only with housebreaking and theft. R. v. Lamoureux (1900), 4 C. C. C., 101.

An indictment for rape includes the lesser charge of assault, and a verdict thereon of guilty of common assault is properly followed by a conviction although the information was laid more than six months after the offence was committed. R. v. Edwards (1898), 2 C. C. C., 96.

Upon an indictment for assaulting and unlawfully wounding, the accused may be convicted of a common assault. R. v. Oliver (1860), 30 L. J. M. C., 12; R. v. Taylor (1869), L. R., 1 C. C. R., 194.

An assault with intent to commit an offence is an attempt to commit such an offence. R. v. John (1888), 15 Can. S. C. R., 384.

Upon a summary trial with consent upon a charge of assault occasioning bodily harm, the magistrate may convict of common assault. Section 951 of the Code applies to summary trials as well as to trials upon an indictment. The word "court" as used in sec. 951 includes an information before a justice for an indictable offence. R. v. Coolen (1904), 8 C. C. C., 157.

On the trial of an indictment to commit rape if the only issue involved is as to the identity of the prisoner, it is unnecessary for the trial judge to point out to the jury that the law permits the finding of a lesser offence than the one charged. R. v. Clarke (1907), 12 C. C. C., 299.

952. On indictment for murder, conviction may be of concealment of birth.—If any person tried for the murder of any child is acquitted thereof, the jury by whose verdict such person is acquitted may find, in case it so appears in evidence, that the child had recently been born, and that such person did, by some secret disposition of such child or of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as it might have passed if such person had been convicted upon an indictment for the concealment of birth. 55-56 V., c. 29, s. 714.

See section 272.

953. Charge for stealing, conviction for fraudulently dealing with cattle.—When an offence under section three hundred and sixty-nine is charged and not proved, but the evidence establishes an offence under section three hundred and ninety-

two, the accused may be convicted of such latter offence and punished accordingly. 1 E. VII., c. 42, s. 2.

954. Trial of joint receivers.—If, upon the trial of two or more persons indicted for jointly receiving any property, it is proved that one or more of such persons separately received any part or parts of such property, the jury may convict, upon such indictment, such of the said persons as are proved to have received any part or parts of such property. 55-56 V., c. 29, s. 715.

955. Trial for coinage offences.—General resemblance sufficient.—Upon the trial of any person accused of any offence respecting the currency or coin, or against the provisions of Part IX, relating to coin, no difference in the date or year, or in any legend marked upon the lawful coin described in the indictment, and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin, or upon any die, plate, press, tool or instrument used, constructed, devised, adapted or designed for the purpose of counterfeiting or imitating any such lawful coin, shall be considered a just or lawful cause or reason for acquitting any person of such offence; and it shall, in any case, be sufficient to prove such general resemblance to the lawful coin as will show an intention that the counterfeit should pass for it. 55-56 V., c. 29, s. 718.

956. Verdict in cases of libel may be guilty or not guilty generally.—Or special.—On the trial of any indictment or information for the making or publishing of any defamatory libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information, and shall not be required or directed, by the court or judge before whom such indictment or information is tried, to find the defendant guilty merely on the proof of publication by such defendant of the paper charged to be a defamatory libel, and of the sense ascribed to the same in such indictment or information; but the court or judge before whom such trial is had shall, according to the discretion of such court or judge, give the opinion and direction of such court or judge to the jury on the matter in issue as in other criminal cases; and the jury may, on such or special issue, find a special verdict if they think fit so to do.

2. **Arrest of judgment.**—The defendant, if found guilty, may move in arrest of judgment on such ground and in such manner as heretofore. 55-56 V., c. 29, s. 719.

957. Destroying counterfeit coin.—If any false or counter-

feit coin is produced on any trial for an offence against the provisions of Part IX, relating to coin, the court shall order the same to be cut in pieces in open court, or in the presence of a justice, and then to be delivered to or for the lawful owner thereof, if such owner claims the same. 55-56 V., c. 29, s. 721.

958. View.—On the trial of any person for an offence against this Act, the court may, if it appears expendient for the ends of justice, at any time after the jurors have been sworn to try the case and before they give their verdict, direct that the jury shall have a view of any place, thing or person, and shall give directions as to the manner in which, and the persons by whom, the place, thing or person shall be shown to such jurors, and may for that purpose adjourn the trial, and the costs occasioned thereby shall be in the discretion of the court.

2. **Directions preventing communication.—Directory.**—When such view is ordered, the court shall give such directions as seem requisite for the purpose of preventing undue communication with such jurors: Provided that no breach of any such directions shall affect the validity of the proceedings. 55-56 V., c. 29, s. 722.

In a case in which the accused person was indicted for unlawfully displacing a railway switch, and was tried without a jury by a county court judge, who reserved his decision, and subsequently, before rendering judgment, who examined the switch when passing the place where it was, neither the prisoner nor his counsel being present at the time, it was held (judgment having been given finding the accused guilty) that the judge had no authority to take a "view" of the place, and that even if he had had the right to do so, it should not have been done except in the presence of the accused or of some one acting in his behalf. R. v. Petrie (1890), 20 O. R., 317.

The judge may adjourn the court to enable the jury to have the view, even after the summing up; but the jury must not communicate with the witnesses during such view. R. v. Martin (1881), 12 Cox C. C., 204.

959. Jury consider verdict.—No communication with them.—If the jury retire to consider their verdict they shall be kept under the charge of an officer of the court in some private place, and no person other than the officer of the court who has charge of them shall be permitted to speak or to communicate in any way with any of the jury without the leave of the court.

Directory.—Disobedience to the directions of this section shall not affect the validity of the proceedings.

3. **Empanelling new jury.**—If such disobedience is discovered before the verdict of the jury is returned the court, if it is of opinion that such disobedience might lead to a miscarriage of justice, may discharge the jury and direct a new jury to be sworn

or empanelled during the sitting of the court, or postpone the trial on such terms as justice may require. 55-56 V., c. 29, s. 727.

960. Jury discharged if unable to agree.—If the court is satisfied that the jury are unable to agree upon their verdict, and that further detention would be useless, it may in its discretion discharge them and direct a new jury to be empanelled during the sittings of the court, or may postpone the trial on such terms as justice may require.

2. **Review.**—It shall not be lawful for any court to review the exercise of this discretion. 55-56 V., c. 29, s. 728.

Upon the discharge of a jury for disagreement, the Court may either traverse the case to the next sittings for the second trial or may have a new jury sworn from the same panel as the first jury and proceed with the second trial at the same sittings.

The reference in Code sec. 960 to the "empanelling" of a new jury is to the selection of the twelve who are to try the charge and not to the empanelling of jurors under the venire to the sheriff. R. v. Gaffin (1904), 8 C. C. C., 194.

961. Proceeding on Sunday, etc., not invalid.—The taking of the verdict of the jury or other proceeding of the court shall not be invalid by reason of its happening on Sunday or on any other holiday. 63-64 V. c. 46, s. 3.

At common law Sunday was a *dies non juridicus*, and all judicial proceedings on that day were void. 2 Coke's Inst., 264-5; R. v. Winsor (1866), 10 Cox C. C., 276.

Code sec. 961 is to be applied only to matters before a jury. The conduct of a preliminary enquiry before a magistrate is a judicial proceeding which cannot be legally done on Sunday. R. v. Cavelier (1896), 1 C. C. C., 134.

A preliminary enquiry held by a magistrate and a commitment for trial made on a statutory holiday are bad in law. R. v. Murray (1897), 1 C. C. C., 452.

Easter Monday is not a statutory holiday and a magistrate may proceed to try a summary conviction matter upon that day.

Semble, Sundays are the only *dies non juridici* under Dominion laws. Ex parte Cormier (1907), 12 C. C. C., 339.

962. Stay by Attorney General after indictment.—The Attorney General may, at any time after an indictment has been found against any person for any offence and before judgment is given thereon, direct the officer of the court to make on the record an entry that the proceedings are stayed by his direction, and on such entry being made all such proceedings shall be stayed accordingly.

2. **Delegation of power.**—The Attorney General may delegate such power in any particular court to any counsel nominated by him. 55-56 V., c. 29, s. 732.

The Attorney-General may exercise the power conferred by Code sec. 962 of entering a *nolle prosequi* to an indictment for criminal libel, al-

though the proceedings were instituted by a private prosecutor. R. v. Blackley (1904), 8 C. C. C., 405.

963. Previous offence charged.—Arraignment on subsequent offence.—Upon any indictment for committing any offence after a previous conviction or convictions, the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he pleads not guilty, or if the court orders a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only; and if the jury finds him guilty, or if, on arraignment he pleads guilty, he shall then, and not before, be asked whether he was so previously convicted as alleged in the indictment.

2. **Trial as to previous offence.**—If he answers that he was so previously convicted, the court may proceed to sentence him accordingly, but if he denies that he was so previously convicted, or stands mute of malice, or will not answer directly to such question, the jury shall be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall, for all purposes, be deemed to extend to such last mentioned inquiry. 55-56 V., c. 29, s. 676.

964. Evidence of character in such case.—If upon the trial of any person for any such subsequent offence, such person gives evidence of his good character, the prosecutor may, in answer thereto, give evidence of the conviction of such person for the previous offence or offences, before such verdict of guilty is returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence. 55-56 V., 29, s. 676.

Where evidence is adduced on behalf of the accused as to his general good character, the witnesses may be cross-examined by the prosecution as to the grounds of their belief and as to the particular facts on the question of character of which they have knowledge. R. v. Barsalou (1901), 4 C. C. C., 347.

965. Saving of power of court.—Nothing in this Act shall alter, abridge or affect any power or authority which any court or judge has hitherto had, or any existing practice or form in regard to trials by jury, jury process, juries or jurors, except in cases where such power or authority, practice or form is expressly altered by or is inconsistent with the provisions of this Act. 55-56 V., c. 29, s. 675.

If one of the jury die before a verdict is arrived at, either the remaining eleven will be discharged and a new jury sworn, or another juror may be added to the eleven.

If the latter course is pursued, the remaining eleven must be sworn again, and the accused will again have his right of challenging. R. v. Edwards (1812), R. & R., 224.

Where a juror, without permission, leaves the jury-box, and goes out of court during the continuance of the trial, the jury will be discharged, and a new one impanelled. R. v. Ward (1867), 10 Cox C. C., 573.

Where a jury was discharged when it was discovered that one of them had been in a house where some one was suffering from a contagious disease, it was held, when the case was again taken up before a new jury, that the accused had not been put in such jeopardy as to preclude his being tried by the second jury. R. v. Considine (1885), 8 L. N., 307.

The right of the jury to find a general verdict in a criminal case, and to decline to find the facts specially, cannot be questioned, especially where their verdict is one of acquittal. R. v. Spence (1855), 12 U. C. Q. B., 519.

DEFENCE OF INSANITY.

966. Insanity of accused at time of offence.—Issue.—Whenever evidence is given upon the trial of any person charged with an indictable offence, that such person was insane at the time of the commission of such offence, the jury, if they acquit such person, shall be required to find, specially, whether such person was insane at the time of the commission of such offence, and to declare whether he is acquitted by it on account of such insanity.

2. **Custody after finding by jury.**—If the jury finds that such person was insane at the time of committing such offence, the court before which such trial is had shall order such person to be kept in strict custody in such place and in such manner as to the court seems fit, until the pleasure of the lieutenant governor is known. 55-56 V., c. 29, s. 736.

See section 19 as to insanity as a defence to crime.

A case may be reserved at the instance of the Crown upon a question of law as to whether there was any evidence of insanity to support the jury's verdict of not guilty upon that ground. R. v. Phinney (1903), 6 C. C. C., 469.

967. At time of arraignment or trial.—Issue.—If at any time after the indictment is found, and before the verdict is given, it appears to the court that there is sufficient reason to doubt whether the accused is then, on account of insanity, capable of conducting his defence, the court may direct that an issue shall be tried whether the accused is or is not then, on account of insanity, unfit to take his trial.

2. **Trial of issue.**—If such issue is directed before the accused is given in charge to a jury for trial on the indictment, such issue shall be tried by any twelve jurors.

3. **As an additional issue.**—If such issue is directed after the accused has been given in charge to a jury for trial on the indictment, such jury shall be sworn to try this issue in addition to that on which they are already sworn.

4. **If sane trial proceeds.**—If the verdict on this issue is that the accused is not then unfit to take his trial, the arraignment or the trial shall proceed as if no such issue had been directed.

5. **If insane jury discharged.**—If the verdict is that he is unfit on account of insanity, the court shall order the accused to be kept in custody till the pleasure of the lieutenant governor of the province shall be known, and any plea pleaded shall be set aside and the jury shall be discharged.

6. **Subsequent trial.**—No such proceeding shall prevent the accused being afterwards tried on such indictment. 55-56 V., c. 29, s. 737.

See section 19.

968. Insanity of person to be discharged for want of prosecution.—If any person charged with an indictable offence is brought before any court before which such person might be tried for such offence to be discharged for want of prosecution, and such person appears to be insane, the court shall order a jury to be empanelled to try the sanity of such person, and if the jury so empanelled finds him insane, the court shall order such person to be kept in strict custody, in such place and in such manner as to the court seems fit, until the pleasure of the lieutenant-governor is known. 55-56 V., c. 29, s. 739.

969. Custody of insane persons.—In all cases of insanity so found, the lieutenant governor may make an order for the safe custody of the person so found to be insane, in such place and in such manner as to him seems fit. 55-56 V., c. 29, s. 740.

A warrant may be issued by the Lieutenant Governor of the Province for the detention in an asylum of a prisoner acquitted on account of insanity at the time of the offence, although found same at the time of trial. Re Alexandre Duclos (1907), 12 C. C. C., 278.

970. Insanity of person imprisoned.—Return to imprisonment when sane.—The lieutenant governor, upon such evidence of the insanity of any person imprisoned in any prison other than a penitentiary for an offence, or imprisoned for safe

custody charged with an offence, or imprisoned for not finding bail for good behaviour or to keep the peace, as the lieutenant governor considers sufficient, may order the removal of such insane person to a place of safe keeping; and such person shall remain there, or in such other place of safe keeping as the lieutenant governor from time to time orders, until his complete or partial recovery is certified to the satisfaction of the lieutenant governor, who may then order such insane person back to imprisonment, if then liable thereto, or otherwise to be discharged. 55-56 V., c. 29, s. 741.

WITNESSES AND ATTENDANCE.

971. Attendance of witnesses.—Every witness duly subpœnaed to attend and give evidence at any criminal trial before any court of criminal jurisdiction shall be bound to attend and remain in attendance throughout the trial. 55-56 V., c. 29, s. 678.

972. Compelling attendance of witnesses—Warrant.—Upon proof to the satisfaction of the judge of the service or the subpœna upon any witness who fails to attend or remain in attendance, or upon its appearing that any witness at the preliminary examination has entered into a recognizance to appear at the trial, and has failed so to appear, and that the presence of such witness is material to the ends of justice, the judge may, by his warrant, cause such witness to be apprehended and forthwith brought before him to give evidence and to answer for his disregard of the subpœna.

2. **Detention on warrant.**—Such witness may be detained on such warrant before the judge or in the common gaol, with a view to secure his presence as a witness, or, in the discretion of the judge, he may be released on a recognizance, with or without sureties, conditioned for his appearance to give evidence and to answer for his default in not attending or not remaining in attendance.

3. **Disposing of charge of contempt.**—The judge may, in a summary manner, examine into and dispose of the charge against such witness, who, if he is found guilty thereof, shall be liable to a fine not exceeding one hundred dollars, or to imprisonment, with or without hard labour, for a term not exceeding ninety days, or to both. 55-56 V., c. 29, s. 678.

The affidavit in support of a motion for the gratuitous issue of subpoenas for the defendant's witnesses should mention only two facts, viz., that the witnesses therein named are necessary for the defence, and that the accused is poor and needy. If the defendant gives in addition the

particular facts which the required witnesses are expected to prove, the application should be refused, as the granting of it in that form might be a prejudging of the question of the admissibility of the evidence. R. v. Grenier (1897), 2 C. C. C., 204.

In the Province of Quebec, an accused can obtain the issue of subpoenas at the expense of the Government under R. S. Q. 2614 only in case of a crime which was a felony before the Criminal Code; and, therefore, as libel was only a misdemeanour before the Code, the Court is not in such a case authorized to order the gratuitous issue of the subpoenas desired by the accused. R. v. Grenier, supra.

The privilege from arrest allowed to a witness summoned before a Court sitting in another judicial district from that in which he lives, does not apply where he is charged with a criminal offence committed by him during the time in which he is in such district for the purpose of giving evidence. Ex parte Ewan (1897), 2 C. C. C., 279.

A witness subpoenaed to attend before justices under a provincial law which specifies a per diem witness fee, but makes no provision as to the time or manner of payment, is not liable to fine for refusing or neglecting to attend under the subpoena unless he had been prepaid his witness fee. R. v. Chisholm (1903), 6 C. C. C., 493.

973. Warrant against witness in the first instance.—Either before or during the sittings of any court of criminal jurisdiction, the court, or any judge thereof, or any judge of any superior or county court, if satisfied by evidence upon oath that any person within the province likely to give material evidence, either for the prosecution or for the accused, will not attend to give evidence at such sittings without being compelled so to do, may, by his warrant, cause such witness to be apprehended and forthwith brought before such court or judge, and such witness may be detained on such warrant before such court or judge or in the common gaol, with a view to secure his presence as a witness, or, in the discretion of the court or judge, may be released on a recognizance, with or without sureties, conditioned for his appearance to give evidence. 63-64 V., c. 46, s. 3.

974. Witness in Canada but beyond jurisdiction of court. —Subpoena.—If any witness in any criminal case cognizable by indictment in any court of criminal jurisdiction at any term, sessions or sittings of any court in any part of Canada, resides in any part of Canada, not within the ordinary jurisdiction of the court before which such criminal case is cognizable, such court may issue a writ of subpoena directed to such witness, in like manner as if such witness was resident within the jurisdiction of the court. 55-56 V., c. 29, s. 679.

975. Proceedings when subpoena disobeyed.—If such witness does not obey such writ of subpœna the court issuing the same may proceed against such witness for contempt or otherwise, or bind over such witness to appear at such days and times

as are necessary, and upon default being made in such appearance may cause the recognizances of such witness to be estreated, and the amount thereof to be sued for and recovered by process of law, in like manner as if such witness was resident within the jurisdiction of the court. 55-56 V. c. 29, s. 679.

976. Courts auxiliary.—Judgment of one court acted on by another.—The courts of the several provinces and the judges of the said courts respectively shall be auxiliary to one another for the purposes of this Act; and any judgment, decree or order made by the court issuing such writ of subpœna upon any proceeding against any witness for contempt or otherwise may be enforced or acted upon by any court in the province in which such witness resides in the same manner and as validly and effectually as if such judgment, order or decree had been made by such last mentioned court. 63-64 V., c. 46, s. 3.

977. Procuring attendance of witness who is a prisoner.—Order.—When the attendance of any person confined in any prison in Canada, or upon the limits of any gaol, is required in any court of criminal jurisdiction in any case cognizable therein by indictment, the court before whom such prisoner is required to attend, or any judge of such court or of any superior court or county court, or any chairman of General Sessions, may, before or during any such term or sittings at which the attendance of such person is required, make an order upon the warden or gaoler of the prison or upon the sheriff or other person having the custody of such prisoner,—

(a) to deliver such prisoner to the person named in such order to receive him; or,

(b) to himself convey such prisoner to such place.

2. **Prisoner conveyed according to terms of order.**—The warden, gaoler or other person aforesaid, having the custody of such prisoner, when so required by order as aforesaid, upon being paid his reasonable charges in that behalf, or the person to whom such prisoner is required to be delivered as aforesaid, shall, according to the exigency of the order, convey the prisoner to the place at which he is required to attend and there produce him, and then to receive and obey such further order as to the said court seems meet. 63-64 V., c. 46, s. 3.

EVIDENCE ON THE TRIAL.

978. Admission on trial.—Any accused person on his trial for any indictable offence, or his counsel or solicitor, may admit

any fact alleged against the accused so as to dispense with proof thereof. 55-56 V., c. 29, s. 690.

On a charge of being an inmate of a bawdy-house, it is competent for the accused or her counsel to consent that the evidence which had been given before the magistrate upon a concluded trial of another person for keeping the bawdy-house, should be read as evidence in the case. R. v. St. Clair (1900), 3 C. C. C., 551.
See also R. v. Ray (1890), 20 O. R., 212.

979. Certificate of former trial upon trial of indictment for perjury.—Evidence.—A certificate containing the substance and effect only, omitting the formal part, of the indictment and trial for any offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court whereat the indictment was tried, or among which such indictment has been filed, or by the deputy of such clerk or other officer, shall, upon the trial of an indictment for perjury or subornation of perjury, be sufficient evidence of the trial of such indictment without proof of the signature or official character of the person appearing to have signed the same. 55-56 V., c. 29, s. 691.

On a charge of perjury committed at the trial of an indictment, such trial and the indictment, verdict, and judgment therein must be proved as matters of record. Such proof may be given either by the production of the original record or of an exemplification thereof, or by a certificate under Code sec. 979 of the substance and effect of the indictment and trial.
The *viva voce* testimony of the clerk of assize and of the official stenographer with the production of the official book of entry in which the clerk recorded his memoranda of the proceedings and of the stenographer's notes of the evidence, are insufficient as legal proof of the fact of the former trial. R. v. Drummond (1905), 10 C. C. C., 340.

980. Evidence of coin being false or counterfeit.—When, upon the trial of any person, it becomes necessary to prove that any coin produced in evidence against such person is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit by the evidence of any moneyer or other officer of His Majesty's mint, or other person employed in producing the lawful coin in His Majesty's dominions, or elsewhere, whether the coin counterfeited is current coin, or the coin of any foreign prince, state or country, not current in Canada, but it shall be sufficient to prove the same to be false or counterfeited by the evidence of any witness. 55-56 V., c. 29, s. 692.

981. Evidence on proceedings for advertising counterfeit money.—On the trial of any person charged with any of the offences mentioned in section five hundred and sixty-nine, any letter, circular, writing or paper offering or purporting to offer

for sale, loan, gift or distribution, or giving or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, or concerning any similar scheme or device to defraud the public shall be *prima facie* evidence of the fraudulent character of such scheme or device. 55-56 V., c. 29, s. 693.

982. Proof of previous conviction.—A certificate containing the substance and effect only, omitting the formal part, of any previous indictment and conviction for any indictable offence, or a copy of any summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court before which the offender was first convicted, or to wich such summary conviction was returned, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of such conviction without proof of the signature or official character of the person appearing to have signed the same. 55-56 V., c. 29, s. 694.

Upon a trial and conviction for theft the fact that evidence was admitted for the Crown in respect of a transaction between the complainant and the accused which had been the subject of a prior indictment against the accused for theft, on which prior indictment the accused had been acquitted, will not invalidate the conviction, if the jury were informed of such acquittal and instructed in accordance with the prior verdict that the first transaction was in fact a loan repayable on the date of the offence now charged. R. v. Menard (1903), 8 C. C. C., 80.

983. Evidence at trial for child-murder.—The trial of any woman charged with the murder of any issue of her body, male or female, which being born alive would, by law, be bastard, shall proceed and be governed by such and the like rules of evidence and presumption as are by law used and allowed to take place in respect to other trials for murder. 55-56 V., c. 29, s. 697.

984. Proof of age of child, boy, etc.—Entry or record.—To prove the age of a boy, girl, child or young person for the purposes of sections two hundred and eleven, two hundred and fifteen, two hundred and forty-two, two hundred and forty-three, two hundred and forty-five, two hundred and ninety-four, three hundred and one, three hundred and two, three hundred and fifteen and three hundred and sixteen, any entry or record by an incorporated society or its officers having had the control or care of the boy, girl, child or young person at or about the time of the boy, girl, child or young person being brought to Canada, if such entry or record has been made before the alleged offence was committed, shall be *prima facie* evidence of such age.

2. **Inference as to age from appearance.**—In the absence of other evidence, or by way of corroboration of other evidence, the judge, or in cases where an offender is tried with a jury, the jury before whom an indictment for the offence is tried, or the justice before whom a preliminary inquiry thereinto is held, may infer the age from the appearance of the boy, girl, child or young person. 63-64 V., c. 46, s. 3.

See Phipson on Evidence, 2nd ed., 317; Doe v. Andrews, 15 Q. B. D., 756.

985. Presence of gaming instruments proof of gaming character of house.—When any cards, dice, balls, counters, tables or other instruments of gaming used in playing any unlawful game are found in any house, room or place suspected to be used as a common gaming house, and entered under a warrant or order issued under this Act, or about the person of any of those who are found therein, it shall be *prima facie* evidence, on the trial of a prosecution under section two hundred and twenty-eight or section two hundred and twenty-nine, that such house, room or place is used as a common gaming house, and that the persons found in the room or place where such instruments of gaming are found were playing therein, although no play was actually going on in the presence of the officer entering the same under such warrant or order, or in the presence of the persons by whom he is accompanied. 63-64 V., c. 46, s. 3.

Section 985 of the Code which declares that the finding of instruments of gaming upon an order of search under Code sec. 641, shall constitute *prima facie* evidence that the place is used as a common gaming house and that play was going on, has no application to a charge under section 236 for selling lottery tickets. R. v. Hong Guey (1907), 12 C. C. C., 366.

986. Evidence of gaming house.—In any prosecution under section two hundred and twenty-eight for keeping a common gaming house, or under section two hundred and twenty-nine for playing or looking on while any other person is playing in a common gaming house, it shall be *prima facie* evidence that a house, room or place is used as a common gaming house, and that the persons found therein were unlawfully playing therein,—

(a) **Obstruction of constable.**—If any constable or officer authorized to enter such house, room or place, is wilfully prevented from, or obstructed or delayed in entering the same or any part thereof; or,

(b) **Fitted for gaming or for concealing instruments.**—If any such house, room or place is found fitted or provided with any means or contrivance for unlawful gaming, or with any means

or contrivance for concealing, removing or destroying any instruments of gaming. 63-64 V., c. 46, s. 3.

987. Evidence of gaming in stocks or merchandise.—Whenever, on the trial of a person charged with making an agreement for the sale or purchase of shares, goods, wares or merchandise in the manner set forth in section two hundred and thirty-one, it is established that the person so charged has made or signed any such contract or agreement of sale or purchase, or has acted, aided or abetted in the making or signing thereof, the burden of proof of the *bona fide* intention to acquire or to sell such goods, wares or merchandise, or to deliver or to receive delivery thereof, as the case may be, shall rest upon the person so charged. 55-56 V., c. 29, s. 704.

988. Evidence of stealing ores or minerals.—In any prosecution, proceeding or trial for stealing ores or minerals the possession, contrary to the provisions of any law in that behalf, of any smelted gold or silver, or any gold-bearing quartz, or any unsmelted or otherwise unmanufactured gold or silver, by any operator, workman or labourer actively engaged in or on any mine, shall be *prima facie* evidence that the same has been stolen by him. 55-56 V., c. 29, s. 707.

989. Evidence of property in cattle.—In any criminal prosecution, proceeding or trial, the presence upon any cattle of a brand or mark, which is duly recorded or registered under the provisions of any Act, ordinance or law, shall be *prima facie* evidence that such cattle are the property of the registered owner of such brand or mark.

2. **Possession of cattle with brand prima facie evidence of theft.**—When a person is charged with theft of cattle, or with an offence under paragraph (a) or paragraph (b) of section three hundred and ninety-two respecting cattle, possession by such person or by others in his employ or on his behalf of such cattle bearing such a brand or mark, of which the person charged is not the registered owner, shall throw upon the accused the burden of proving that such cattle came lawfully into his possession or into the possession of such others in his employ or on his behalf, unless it appears that such possession by others in his employ or on his behalf was without his knowledge and without his authority, sanction or approval. 1 E. VII., c. 42, s. 2.

990. Evidence of property in timber.—In any prosecution, proceeding or trial for any offence under section three hundred

and ninety-four a timber mark, duly registered under the provisions of the Timber Marking Act, on any timber, mast, spar, saw-log or other description of lumber, shall be *prima facie* evidence that the same is the property of the registered owner of such timber mark.

2. **Possession of timber with mark prima facie evidence of theft.**—Possession by the accused, or by others in his employ or on his behalf, of any such timber, mast, spar, saw-log or other description of lumber so marked, shall, in all cases, throw upon him the burden of proving that such timber, mast, spar, saw-log or other description of lumber came lawfully into his possession, or into the possession of such others in his employ or on his behalf. 55-56 V., c. 29, s. 708.

991. Evidence of enlistment in cases as to public stores.—In any prosecution, proceeding or trial under sections four hundred and thirty-three to four hundred and thirty-seven inclusive for offences relating to public stores, proof that any soldier, seaman or marine was actually doing duty in His Majesty's service shall be *prima facie* evidence that his enlistment, entry or enrolment has been regular.

2. **Presumption when accused dealer in stores.**—If the person charged with the offence relating to public stores mentioned in section four hundred and thirty-five was, at the time at which the offence is charged to have been committed, in His Majesty's service or employment, or a dealer in marine stores, or a dealer in old metals, knowledge on his part that the stores to which the charge relates bore the marks described in section four hundred and thirty-two, shall be presumed until the contrary is shown. 55-56 V., c. 29, s. 709.

992. Evidence in cases of fraudulent marks on merchandise.—In any prosecution, proceeding or trial for any offence under Part VII. relating to fraudulent marks on merchandise, if the evidence relates to imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced. 55-56 V., c. 29, s. 710.

993. Proceedings against receivers.—Possession of other stolen property.—Notice.—When proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, evidence may be given, at any stage of the proceedings, that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into

consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to be stolen, if not less than three days' notice in writing has been given to the person accused that proof is intended to be given of such other property, stolen within the preceding period of twelve months, having been found in his possession.

2. **Contents of notice.**—Such notice shall specify the nature or description of such other property, and the person from whom the same was stolen. 55-56 V., c. 29, s. 716.

994. Receiving stolen goods.—Possession.—Previous conviction.—Notice.—When proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, and evidence has been given that the stolen property has been found in his possession, then if such person has, within five years immediately preceding, been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen, if not less than three days' notice in writing has been given to the person accused that proof is intended to be given of such previous conviction.

2. **Need not be charged in indictment.**—It shall not be necessary, for the purposes of this section, to charge in the indictment the previous conviction of the person so accused. 55-56 V., c. 29, s. 717.

EVIDENCE TAKEN APART FROM TRIAL.

995. Evidence of person dangerously ill may be taken under commission.—Whenever it is made to appear at the instance of the Crown, or of the prisoner or defendant, to the satisfaction of a judge of a superior court, or a judge of a county court having criminal jurisdiction, that any person who is dangerously ill, and who, in the opinion of some licensed medical practitioner, is not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, such judge may, by order under his hand, appoint a commissioner to take in writing the statement on oath or affirmation of such person.

2. **Evidence to be sent to proper officer when trial outstanding.**—Such commissioner shall take such statement and

shall subscribe the same and add thereto the names of the persons, if any, present at the taking thereof, and if the deposition relates to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same, with the said addition, to the proper officer of the court at which such accused person is to be tried.

3. **In other cases to clerk of the peace.**—In every other case he shall transmit the same to the clerk of the peace of the county, division or city in which he has taken the same, or to such other officer as has charge of the records and proceedings of a superior court of criminal jurisdiction in such county, division or city.

4. **Evidence to be kept for use.**—Such clerk of the peace or other officer shall preserve the same and file it of record, and upon the order of the court or a judge transmit the same to the proper officer of the court where the same shall be required to be used as evidence. 55-56 V., c. 29, s. 681.

996. Presence of prisoner when such evidence is taken.—Whenever a prisoner in actual custody is served with or receives notice of an intention to take the statement mentioned in the last preceding section the judge who has appointed the commissioner may, by an order in writing, direct the officer or other person having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statements; and such officer or other person shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner has been conveyed. 55-56 V., c. 29, s. 682.

997. Evidence may be taken out of Canada under commission.—Whenever it is made to appear, at the instance of the Crown, or of the prisoner or defendant, to the satisfaction of the judge of any superior court, or the judge of a county court having criminal jurisdiction, that any person who resides out of Canada is able to give material information relating to any indictable offence for which a prosecution is pending, or relating to any person accused of such offence, such judge may, by order under his hand, appoint a commissioner or commissioners to take the evidence, upon oath, of such person.

2. **Rules and practice same as in other cases.**—Until otherwise provided by rules of court, the practice and procedure in connection with the appointment of commissioners, under this section, the taking of depositions by such commissioners, and the

certifying and return thereof, and the use of such depositions as evidence, shall be as nearly as practicable the same as those which prevail in the respective courts in connection with like matters in civil causes.

3. **Depositions evidence.**—The depositions taken by such commissioners may be used as evidence at the trial.

4. **May be read before grand jury.**—Subject to such rules of court or to the practice or procedure aforesaid, such depositions may, by the direction of the presiding judge, be read in evidence before the grand jury. 55-56 V., c. 29, s. 683; 58-59 V., c. 40, s. 1; 63-64 V., c. 46, s. 3.

A commission to take the evidence of witnesses abroad in a libel prosecution is properly ordered at the trial where the evidence relates wholly to a plea of justification just entered of record. An order for a commission to take such evidence should not be made before plea. R. v. Nicol (1898), 5 C. C. C., 31.

An order may be made under Code sec. 997 for taking in Canada, under commission, the evidence of a material witness who ordinarily resides out of Canada, but who is temporarily within the jurisdiction and about to return to his own country. R. v. Baskett (1902), 6 C. C. C., 61.

A commission to take evidence in a foreign country for use upon a prosecution for an indictable offence may be ordered under Code sec. 997 while the preliminary enquiry is pending. The evidence taken under commission is admissible as well at the preliminary enquiry as before the grand jury and at the trial of the indictment when found. The order should provide for the return of the commission into the Court from which it issues and should not direct a transmission of the evidence by the commissioner to the magistrate holding the preliminary enquiry. R. v. Verral (1895), 6 C. C. C., 325.

ADMISSION ON TRIAL OF EVIDENCE PREVIOUSLY TAKEN.

998. Deposition may be read in evidence.—Notice of intention to read and opportunity of cross-examination.—If the statement of a sick person has been taken by a commissioner as provided in section nine hundred and ninety-five, and upon the trial of any offender for any offence to which the same relates, the person who made the statement is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to attend at the trial to give evidence, such statement may, upon the production of the judge's order appointing the commissioner, be read in evidence, either for or against the accused, without further proof thereof, if the same purports to be signed by the commissioner by or before whom it purports to have been taken, and it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement was served upon the person, whether prosecutor or accused, against whom it is proposed to be read in evidence, and that such person

or his counsel or solicitor had, or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the same. 55-56 V., c. 29, s. 686.

999. Deposition on preliminary inquiry may be read in evidence in certain events.—If, upon the trial of an accused person such facts are proved upon oath or affirmation that it can be reasonably inferred therefrom that any person, whose evidence was given at any former trial upon the same charge or whose deposition has been theretofore taken in the investigation of the charge against such accused person, is dead, or so ill as not to be able to travel, or is absent from Canada, and if it is proved that such evidence was given or such deposition was taken in the presence of the person accused, and that he or his counsel or solicitor if present had a full opportunity of cross-examining the witness, then if the evidence or deposition purports to be signed by the judge or justice before whom the same purports to have been taken, it shall be read as evidence in the prosecution, without further proof thereof, unless it is proved that such evidence or deposition was not in fact signed by the judge or justice purporting to have signed the same. 63-64 V., c. 46, s. 3.

A deposition to be admissible under this section must be a *verbatim* record of the witness' evidence. R. v. Graham (1898), 2 C. C. C., 388.

Notes of evidence taken by the coroner at an inquest which do not contain the precise expressions of the witness, but a summary only of the evidence, are not admissible in contradiction of the witness' testimony in a subsequent proceeding unless signed by the witness, or unless read over to and acquiesced in by him. R. v. Ciarlo (1897), 1 C. C. C., 157.

A deposition read over to and signed by the deponent may be admissible in evidence as a dying declaration, although irregular as a deposition under Code sec. 999, because taken in the absence of the accused. R. v. Woods (1897), 2 C. C. C., 159.

In order that this section should apply to make admissible as evidence at the trial the deposition of a witness, since deceased, taken on a preliminary enquiry or other investigation of a charge against the accused before a justice of the peace, the document containing the deposition is alone to be looked at to ascertain if the deposition "purports to be signed by the justice," as is required by this section. R. v. Hamilton (1898), 2 C. C. C., 390.

Where the deposition sought to be used had been signed by both the witness and the magistrate, and was attached at the end of depositions taken by the magistrate on a previous date named, but did not itself contain a new "caption," or the date when taken, or any record by the magistrate certifying that such added deposition had been taken by him, and the first depositions formed in themselves a complete document concluding with the magistrate's note of the remand of the case, it is not to be presumed that the informal deposition following the formal document is a continuation of the first deposition (in which appeared no reference to the added deposition), or that it relates to the same charge, and it was held that such added deposition did not "purport to be signed by the justice by or before whom the same purports to have been taken." R. v. Hamilton, supra.

A deposition, the caption of which sets out the name of the justice and describes him as one of the justices of the peace for a named county, "purports to be signed by the justice by or before whom the same purports to have been taken," if the same is signed by the justice with his name only, without adding to it the initials "J. P." and the name of the county for which he is a justice; and such a deposition is *prima facie* admissible in evidence. R. v. Hamilton, supra.

The expression "full opportunity of cross-examining" as used in this section implies for the accused the right to hear the evidence delivered in his presence, to catch the words as they fall from the lips of the witness, and to mark his expression and demeanour while testifying. R. v. Lepine (1900), 4 C. C. C., 145.

The absence from Canada required by this section to be shewn in respect of a witness before his depositions on the preliminary enquiry can be used as evidence for the prosecution at the trial, must be of a permanent nature, and a mere temporary absence is insufficient. The onus of showing that the witness' absence from Canada is not merely temporary is upon the prosecution. R. v. McCullough (1901), 8 C. C. C., 278.

Absence of a witness from Canada is not sufficiently proved under this section to admit his depositions taken on the preliminary enquiry, by shewing the receipt of letters and telegrams from him despatched from an adjoining territory of the United States, the latest despatch being six days prior to the trial. R. v. Trefry (1904), 8 C. C. C., 297.

A deposition upon a preliminary enquiry cannot be read as evidence in the event of the deponent's death, unless the accused was represented by counsel or solicitor when the deposition was taken.

The Criminal Code supersedes the common law procedure as to the conditions upon which a deposition upon a preliminary examination can be used upon the trial in case of the deponent's death. R. v. Snelgrove (1906), 12 C. C. C., 189.

1000. Depositions may be used in trial for other offences.—Depositions taken in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of such person for any other offence, upon the like proof and in the same manner, in all respects, as they may according to law, be read in the prosecution of the offence with which such person was charged when such depositions were taken. 55-56 V., c. 29, s. 688.

1001. Statement by accused.—The statement made by the accused person before the justice may, if necessary, upon the trial of such person, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same. 55-56 V., c. 29, s. 689.

CORROBORATION.

1002. Necessary in certain cases.—No person accused of any offence under any of the hereunder mentioned sections shall be convicted upon the evidence of one witness, unless such wit-

ness is corroborated in some material particular by evidence implicating the accused:—

(a) Treason, Part II., section seventy-four;

(b) Perjury, Part IV., section one hundred and seventy-four;

(c) Offences under Part V., sections two hundred and eleven to two hundred and twenty inclusive;

(d) Procuring feigned marriage, Part VI., section three hundred and nine;

(e) Forgery, Part VII., sections four hundred and sixty-eight to four hundred and seventy inclusive. 55-56 V., c. 29, s. 684; 56 V., c. 32, s. 1.

The corroborative evidence "implicating" the accused which is made necessary by this section to sustain a charge of seduction of a girl under sixteen may consist of the prisoner's admission made after she attained sixteen that he had had connection with her. A statement made by the accused before he was charged with the offence that he had been advised that if he could get the girl to marry him he would escape, "punishment," is corroborative evidence "implicating" the accused and proper to be considered by a jury or by a judge exercising the functions of a jury. R. v. Wyse (1895), 1 C. C. C., 6.

Evidence of the girl's pregnancy, and of her having been employed in domestic service at the defendant's residence and of facts shewing merely a strong probability of there having been no opportunity at which any other man could have been responsible for the condition, does not constitute corroborative evidence "implicating the accused" required by this section in order to sustain a conviction. R. v. Vahey (1899), 2 C. C. C., 258.

In a charge of forgery, to which this section applies, it was held that the corroboration must be that of another witness, and not merely the evidence of the same witness on another point. R. v. McBride (1895), 2 C. C. C., 544; R. v. Giles (1856), 6 U. C. C. P., 84.

The testimony of an accomplice must be corroborated both as to the circumstances of the crime and as to the identity of the accused. R. v. Farlar (1837), 8 C. & P., 106; R. v. Stubbs (1855), 25 L. J. M. C., 16; R. v. Ah Jim (1905), 10 C. C. C., 126.

On a charge of allowing a girl under eighteen to be upon premises for immoral purposes, the evidence of the girl proving that she shared with the proprietor the money she obtained by prostitution there carried on, is sufficiently corroborated under this section by the evidence of another witness tending to shew that the place was a bawdy-house. R. v. Brindley (1903), 6 C. C. C., 196.

On a charge of criminal seduction under promise of marriage, corroboration is essential under this section; but the corroboration need not be as to every fact in issue and it is sufficient if it confirms the belief that the prosecutrix is speaking the truth.

The defendant having been convicted and no question having been reserved or appeal taken except as to the sufficiency of the corroboration under this section, the appellate court cannot review the whole evidence but must proceed on the assumption that the charge as laid was fully proved by the complainant's testimony if the corroborative evidence satisfies the statutory requirements. R. v. Daun (1906), 11 C. C. C. 244.

Where a prisoner is charged with forgery, by writing three false signatures, as indorsements, on the back of a promissory note, and each of the parties whose signature is thus made to appear swears that it is not

his and is a forgery, there is the corroborative evidence required by sec. 1002 to make good a conviction. R. v. Houle (1905), 12 C. C. C., 56.

Evidence that the accused charged with seduction of a girl between fourteen and sixteen had previously told a witness other than the girl of his desire to have sexual intercourse with her, and of subsequent admissions of the accused from which it might be inferred that he had afterwards taken advantage of an opportunity when he was left in charge of the house where the girl lived, is corroborative evidence to go to the jury under sec. 1002 of the Code, although no medical evidence is adduced in support of the girl's story. R. v. Burr (1906), 12 C. C. C., 103.

Upon an appeal by the Crown, by leave of the Court of Appeal, from the judgment acquitting the accused and withdrawing the case from the jury on the ground that there was no corroborative evidence under sec. 1002 the Court of Appeal, on revising such ruling, should direct a new trial. R. v. Burr, supra.

1003. Evidence of child not under oath received in certain cases.—Where, upon the hearing or trial of any charge for carnally knowing or attempting to carnally know a girl under fourteen or of any charge under section two hundred and ninety-two for indecent assault, the girl in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not, in the opinion of the court or justices, understand the nature of an oath, the evidence of such girl or other child of tender years may be received though not given upon oath if, in the opinion of the court or justices, as the case may be, such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

2. **Corroboration.**—But no person shall be liable to be convicted of the offence, unless the testimony admitted by virtue of this section and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused.

3. **If false, perjury.**—Any witness whose evidence is admitted under this section is liable to indictment and punishment for perjury in all respects as if he or she had been sworn. 55-56 V., c. 29, s. 685.

If the unsworn statement of a child is admitted under this section where the accused is charged with having committed an indecent assault, and such unsworn statement is corroborated by other sworn evidence, a subsequent conviction of the accused for simple assault only is good, although the unsworn evidence of the child, which would have been inadmissible if the accused had been tried on a charge of simple assault, is the chief evidence against him. R. v. Grantyers (1893), R. J. Q., 2 Q. B., 376; R. v. De Wolfe (1904), 9 C. C. C., 38.

SENTENCE, ARREST OF JUDGMENT AND APPEAL.

1004. Accused found guilty.—Question before sentence.—If the jury find the accused guilty, or if the accused pleads

guilty, the judge presiding at the trial shall ask him whether he has anything to say why sentence should not be passed upon him according to law: Provided that the omission so to ask shall have no effect on the validity of the proceedings. 55-56 V., c. 29, s. 733.

1005. Sentence justified by any count.—If one sentence is passed upon any verdict of guilty on more counts of an indictment than one, the sentence shall be good if any of such counts would have justified it. 55-56 V., c. 29, s. 626.

1006. Where sentence carried out when venue changed.—When any sentence is passed upon any person after a trial had under an order for changing the place of trial, the court may in its discretion, either direct the sentence to be carried out at the place where the trial was had or order the person sentenced to be removed to the place where his trial would have been had but for such order, so that the sentence may be there carried out. 55-56 V., c. 29, s. 733.

1007. Motion in arrest of judgment.—The accused may at any time before sentence move in arrest of judgment on the ground that the indictment does not, after amendment, if any, state any indictable offence.

2. **Deciding or reserving.**—The court may in its discretion either hear and determine the matter during the same sittings or reserve the matter for the court of appeal as hereinafter provided.

3. **Discharge.**—If the court decides in favour of the accused, he shall be discharged from that indictment.

4. **Sentence during sitting of court.**—If no such motion is made, or if the court decides against the accused upon such motion, the court may sentence the accused during the sittings of the court, or the court may in its discretion discharge him on his own recognizance, or on that of such sureties as the court thinks fit, or both, to appear and receive judgment at some future court or when called upon.

5. **Sentence subsequently.**—If sentence is not passed during the sittings, the judge of any superior court before which the person so convicted afterwards appears or is brought, or if he was convicted before a court of general or quarter sessions, the court of general or quarter sessions at a subsequent sittings may pass sentence upon him or direct him to be discharged. 55-56 V., c. 29, s. 733.

A motion in arrest of judgment is not the proper manner to raise the question of jurisdiction, for such a motion can only avail when the indictment does not state any indictable offence. R. v. Hogle (1896), 5 C. C. C., at p. 55.

An indictment for stealing under a power of attorney which charges that the money appropriated was the proceeds of a sale made by the defendant, while acting under a power of attorney, will not be quashed for failure to allege that the power of attorney was one for the sale or disposition of property, but particulars will be ordered as to the date, nature or purport of the alleged power of attorney. The defect, being only a partial one, was cured by verdict, and cannot be given effect to upon a reserved case as to whether a verdict of guilty on such indictment was valid or not. R. v. Fulton (1900), 5 C. C. C., 36.

1008. Woman sentenced to death while pregnant.—If sentence of death is passed upon any woman she may move in arrest of execution on the ground that she is pregnant.

2. **Inquiry as to pregnancy.**—If such a motion is made the court shall direct one or more registered medical practitioners to be sworn to examine the woman in some private place, either together or successively, and to inquire whether she is with child of a quick child or not.

3. **Arresting execution.**—If upon the report of any of them it appears to the court that she is so with child, execution shall be arrested until she is delivered of a child, or until it is no longer possible in the course of nature that she should be so delivered. 55-56 V., c. 29, s. 730.

1009. Jury de ventre inspiciendo.—No jury *de ventre inspiciendo* shall be empanelled or sworn. 55-56 V., c. 29, s. 731.

1010. Judgment not to be stayed or reversed on certain grounds.—Judgment, after verdict upon an indictment for any offence against this Act, shall not be stayed or reversed,—

(a) for want of a *similiter*;

(b) by reason that the jury process has been awarded to a wrong officer, upon an insufficient suggestion;

(c) for any misnomer or misdescription of the officer returning such process, or of any of the jurors; or,

(d) because any person has served upon the jury who was not returned as a juror by the sheriff or other officer.

2. **Indictment sufficient after verdict notwithstanding certain objections.**—Where the offence charged is an offence created by any statute, or subjected to a greater degree of punishment by any statute, the indictment shall, after verdict, be held sufficient, if it describes the offence in the words of the statute creating the offence, or prescribing the punishment, although they are disjunctively stated or appear to include more than one offence, or otherwise. 55-56 V., c. 29, s. 734.

A person of the name or a similar name to that of a qualified juror and who is served in mistake for the qualified juror, but who is not him-

self upon the list of persons from which alone jurors may properly be summoned, is not a qualified juror under the Criminal Code and his acting as such is a good ground for ordering a new trial. Such defect in the qualification of a juror goes to the jurisdiction of the tribunal and is not cured by sec. 1010 of the Code. R. v. McCraw (1906), 12 C. C. C., 253.

1011. Direction as to jury or jurors directory.—No omission to observe the directions contained in any Act as respects the qualification, selection, balloting or distribution of jurors, the preparation of the jurors' book, the selecting of jury lists, the drafting of panels from the jury lists or the striking of special juries, shall be a ground for impeaching any verdict, or shall be allowed for error upon any appeal to be brought upon any judgment rendered in any criminal case. 55-56 V., c. 29, s. 735; 56 V., c. 32, s. 1.

It has been held that this section has reference only to the procedure regarding the making of the jury lists and the formation of the panels under the provisions of the various provincial statutes relating to juries, but that it does not affect the procedure regarding the choosing or formation of a jury under the provisions of the Code from the panel returned by a sheriff. R. v. Boyd (1896), R. J. Q., 2 Q. B., 284.

A panel returned contained the names of Robert Grant and Robert Crane, and Robert Grant was called but Robert Crane by mistake answered to the name and was sworn without challenge. Before the jury left the box, the mistake was discovered. It was held that a conviction was invalid because the prisoner had not had an opportunity to challenge Robert Crane. R. v. Feore (1877), 3 Q. L. R., 219.

1012. Appeal from conviction by judge of trade conspiracy.—An appeal upon all issues of law and fact shall lie from any conviction by the judge without the intervention of a jury for any offence mentioned in section four hundred and ninety-eight to the court of appeal in the province where such conviction is made; and the evidence taken upon the trial shall form part of the record in appeal, and, for that purpose, the court before which the case is tried shall take note of the evidence, and of all legal objections thereto. 52 V., c. 41, s. 5.

1013. Appeal in other cases of indictable offences.—An appeal from the verdict or judgment of any court or judge having jurisdiction in criminal cases, or of a magistrate proceeding under section seven hundred and seventy-seven, on the trial of any person for an indictable offence, shall lie upon the application of such person if convicted, to the court of appeal in the cases hereinafter provided for, and in no others.

2. **Decision final when.**—Whenever the judges of the court of appeal are unanimous in deciding an appeal brought before the said court their decision shall be final.

3. **Appeal in case of dissent.**—If any of the judges dissent from the opinion of the majority, an appeal shall lie from such decision to the Supreme Court of Canada as hereinafter provided. 55-56 V., c. 29, s. 742.

The right of appeal in criminal cases to the Supreme Court of Canada from the decision of a Court of Criminal Appeal is restricted to cases where the conviction has been affirmed by the Court of Appeal, and then only in case one or more of the judges of the latter court has dissented from the decision of the majority of the Court. If by the decision of the Court of Appeal, the conviction is set aside and a new trial ordered, there is no appeal therefrom to the Supreme Court of Canada. Viau v. R. (1898), 2 C. C. C., 540.

The dissent from the "opinion" of the majority by any of the judges of the Court of Appeal which is necessary in order to confer the right of a further appeal to the Supreme Court of Canada has reference to the "decision" or "judgment" of such majority in affirmance of a conviction; and where a majority of the Court of Appeal in directing a new trial also expressed their concurrence (two of them dissenting) with that part of the decision appealed from by which it was held that certain evidence was properly admitted, the latter decision is not reviewable by the Supreme Court of Canada. Viau v. R., supra.

The jurisdiction of a judge of the Supreme Court of Canada in matters of habeas corpus in any criminal case under any statute of Canada is limited to an enquiry into the cause of commitment as disclosed by the warrant of commitment. Ex parte Macdonald (1896), 3 C. C. C., 10.

See also Re Trepanier (1885), 12 S. C. R., 111; Re Sproule (1886), 12 S. C. R., 140.

Where on a criminal trial a motion for a reserved case made on two grounds is refused and on appeal the Appellate Court unanimously affirms the decision of the trial judge as to one of such grounds but not as to the other, an appeal to the Supreme Court of Canada can only be based on the one as to which there was a dissent. McIntosh v. R. (1894), 23 S. C. R., 180.

A reserved case upon an objection taken before pleading, that the charge upon which the accused was arraigned for a "speedy trial," was not founded upon the evidence adduced at the preliminary enquiry, should not be heard by the Appellate Court to which it is referred until after the trial has been concluded, and then only in case of conviction. R. v. Trepanier (1901), 4 C. C. C., 259.

"If judgment has not been given, we have nothing to consider, for we only sit here to consider something which has been decided, not to give advice prior to a decision by some other tribunal." (Lord Campbell). R. v. Faderman, 1 Denison, 573.

Held by the Court of Queen's Bench at Montreal that there having been no conviction, no question of law could be reserved, and that the Court of Appeal had no jurisdiction. R. v. Paxton (1866), 2 L. C. L. J., 162; R. v. Lalanne (1879), 13 L. N., 16.

See also Harris' Criminal Law, p. 451; Shirley's Sketch of Crim. Law, p. 118.

A magistrate trying a charge of theft of goods of the value of less than $10 under the summary trials procedure with the consent of the accused, is not a "court or judge having jurisdiction in criminal cases" within Code sec. 1013, allowing an appeal by way of case reserved. R. v. Hawes (1900), 4 C. C. C., 529.

Except where specially authorized by statute, an appeal does not lie in Ontario to the Court of Appeal from an order of the High Court of

Justice quashing a summary conviction made under a provincial statute. R. v. Cushing (1899), 3 C. C. C., 306.

The appeal from a summary conviction under the Seaman's Act of Canada for harboring and secreting a deserting seaman is under section 749 and not under section 1013 of the Criminal Code, and in the Province of Quebec the appeal should be taken to the Crown side and not to the appeal side of the Court of King's Bench of that province. R. v. O'Dea (1899), 3 C. C. C., 402.

1014. Error.—No proceeding in error shall be taken in any criminal case.

2. **Question of law reserved.**—The court before which any accused person is tried may, either during or after the trial, reserve any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the judge, for the opinion of the court of appeal in manner hereinafter provided.

3. **Application.**—Either the prosecutor or the accused may during the trial, either orally or in writing, apply to the court to reserve any such question as aforesaid, and the court, if it refuses so to reserve it, shall nevertheless take a note of such objection.

4. **Trial proceeds.**—After a question is reserved the trial shall proceed as in other cases.

5. **Execution of sentence may be respited.**—If the result is a conviction, the court may in its discretion respite the execution of the sentence or postpone sentence till the question reserved has been decided, and shall in its discretion commit the person convicted to prison or admit him to bail with one or two sufficient sureties, in such sums as the court thinks fit, to surrender at such time as the court directs.

6. **Case stated.**—If the question is reserved, a case shall be stated for the opinion of the court of appeal. 55-56 V., c. 29, s. 743.

Even before the Code a writ of error did not lie in cases of summary conviction. R. v. Powell (1861), 21 U. C. Q. B., 215.

A reserved case may be granted under this section at any time however remote from the date of the trial or judgment, if it is still possible that some beneficial result may accrue to the prisoner by a decision in his favour. R. v. Paquin (1898), 2 C. C. C., 134.

Whether the judge presiding at the trial had jurisdiction to summarily try the defendants is a "question of law" under this section and may be the subject of a reserved case. R. v. Paquin, supra.

A reserved case should not be granted by the trial judge unless he has some doubt in the matter upon which it is suggested that a question be reserved for the opinion of a Court of Appeal. R. v. Letang (1899), 2 C. C. C., 505.

A case may be reserved for the opinion of the Court after verdict. R. v. Patterson, 36 U. C. Q. B., 129.

A case may be reserved regarding an alleged defect in an indictment even after the accused person has pleaded guilty of the offence charged therein. R. v. Brown, L. R., 24 Q. B. D., 357.

Notice of an application by the Crown for a new trial, and of the hearing of a case reserved on the Crown's application where the accused has been acquitted at the trial, should be served upon the accused personally. The authority of the solicitor acting for the accused in the trial proceedings is prima facie to be presumed to have terminated upon the latter's acquittal; and proof of service upon the solicitor is insufficient in the absence of evidence rebutting such presumption. R. v. Williams (1897), 3 C. C. C., 9.

The question as to the order of addresses to the jury by counsel at the close of the evidence is not a question of law proper to be reserved for the opinion of a Court of Appeal under this section. R. v. Connolly (1894), 1 C. C. C., 468.

A question depending upon the facts or the weight of evidence cannot properly be made the subject of a reserved case under this section. R. v McIntyre (1898), 3 C. C. C., 413.

An objection to a trial and verdict on the ground that one of the jurors was not indifferent but had stated before the trial that if he were selected he would send the accused to goal, raises a question of fact and not a question of law, and a Court of Criminal Appeal has no jurisdiction to grant leave to appeal in respect thereof under this section. R. v. Carlin (1903), 6 C. C. C., 507.

Four judges, constituting a majority, of the Supreme Court of Nova Scotia have authority to sit as the Supreme Court of that province in banc to hear a reserved case, the full membership of the Court being seven. George v. R., (1904), 8 C. C. C., 401.

Where on a trial upon an indictment a verdict of guilty was returned, but a reserved case was granted upon a question of law, and the accused admitted to bail, the condition of the recognizance taken being that the accused would appear at the next sittings of the Court "to receive sentence," the condition of the recognizance is not broken if the accused fails to appear after judgment is given on the reserved case quashing the conviction and ordering a new trial. The conviction having been set aside, the accused was entitled to presume that he would not be called for sentence, and the sureties were not bound for his appearance for any other purpose than to receive sentence. R. v. Hamilton (1899), 3 C. C. C., 1.

1015. Appeal from refusal to reserve.—If the court refuses to reserve the question, the party applying may move the court of appeal as hereinafter provided.

2. **Notice of motion.**—The Attorney General or party so applying may, on notice of motion to be given to the accused or prosecutor, as the case may be, move the court of appeal for leave to appeal.

3. **Decision.**—The court of appeal may, upon the motion and upon considering such evidence, if any, as it thinks fit to receive, grant or refuse such leave. 63-64 V., c. 46, s. 3.

Leave to appeal to the Court of Appeal under this section should not be granted to a private prosecutor except under exceptional circumstances. R. v. Burns (1901), 4 C. C. C., 323.

Leave to appeal will not be granted to a private prosecutor from the decision of a police magistrate holding a summary trial by consent, merely upon the ground that the magistrate erred in rejecting certain evidence which was properly admissible but corroborative only. R. v. Burns, supra.

Where there has been an acquittal, the preferable practice is for the trial judge to refuse to reserve a case upon the application of the prosecutor complaining of an erroneous direction, and for the prosecutor to apply to the Court of Appeal under this section for leave to appeal. R. v. Karn (1903), 6 C. C. C., 479.

Where the trial judge has refused to reserve a case upon a question of law and the Court of Appeal is then applied to for leave to appeal under this section, leave cannot be granted in respect of another question of law in respect of which a reserved case had not been asked of the trial judge. R. v. Carlin (1903), 6 C. C. C., 507.

Leave to appeal will not be granted by an appellate court under this section on the ground of the admission of irrelevant evidence if in the opinion of the court the reception of such evidence did not occasion any substantial wrong or miscarriage on the trial. R. v. Callaghan (1903), 8 C. C. C., 143.

The trial judge may if he sees fit grant a reserve case during or after the trial, either upon application therefor or of his own motion, but the Court of Appeal can grant leave to appeal only in the case of an application made during the trial being refused. The words "party applying" in the first paragraph of Code sec. 1015 refer to the application authorized by Code sec. 1014, sub.-sec. (3) to be made during the trial either orally or in writing by the prosecutor or the accused. R. v. Toto (1904), 8 C. C. C., 410.

Upon an application made, pursuant to Code sec. 1015, for leave to appeal after the refusal of a reserved case, ample notice of the application should be given to the Attorney-General, and the notice of motion should set forth the grounds relied upon. R. v. Lai Ping (1904), 8 C. C. C., 467.

1016. Proceedings on appeal granted.—If leave to appeal is granted, a case shall be stated for the opinion of the court of appeal as if the question had been reserved.

2. **Motion for proper sentence.**—If the sentence is alleged to be one which could not by law be passed, either party may without leave, upon giving notice of motion to the other side, move the court of appeal to pass a proper sentence.

3. **By prosecutor.**—If the court has arrested judgment, and refused to pass any sentence, the prosecutor may without leave make such motion. 55-56 V., c. 29, s. 744.

Where in a charge of pocket picking the evidence in the opinion of a Court of Appeal goes no further than to support a reasonable surmise or suspicion that the accused was guilty of the offence and lacks the material ingredients necessary to establish guilt, the conviction will be quashed upon an appeal. R. v. Winslow (1899), 3 C. C. C., 215.

1017. Evidence for court of appeal.—Judge's notes.—On any appeal or application for a few trial, the court before which the trial was had shall, if it thinks necessary, or if the court of appeal so desires, send to the court of appeal a copy of the whole or of such part as may be material of the evidence or the notes taken by the judge or presiding justice at the trial.

2. **Other Evidence.**—The court of appeal may, if only the

judge's notes are sent and it considers such notes defective, refer to such other evidence of what took place at the trial as it thinks fit.

3. **Sending back case.**—The court of appeal may, in its discretion, send back any case to the court by which it was stated to be amended or re-stated. 55-56 V., c. 29, s. 745.

The forwarding of the whole of the evidence taken at the trial does not dispense with the necessity for the trial judge to certify his findings of fact and to specify the points of law as to which he entertains a doubt. R. v. Giles (1894), 31 C. L. J., 33.

1018. Powers of court of appeal upon hearing.—Upon the hearing of any appeal under the powers hereinbefore contained, the court of appeal may,—

(a) confirm the ruling appealed from; or,

(b) if of opinion that the ruling was erroneous, and that there has been a mis-trial in consequence, direct a new trial; or,

(c) if it considers the sentence erroneous or the arrest of judgment erroneous, pass such sentence as ought to have been passed or set aside any sentence passed by the court below, and remit the case to the court below with a direction to pass the proper sentence; or,

(d) if of opinion in a case in which the accused has been convicted that the ruling was erroneous, and that the accused ought to have been acquitted, direct that the accused shall be discharged, which order shall have all the effects of an acquittal, or direct a new trial; or,

(e) make such other order as justice requires. 55-56 V., c. 29, s. 746.

Where, in a charge of pocket picking, the evidence in the opinion of a court of appeal goes no further than to support a reasonable surmise or suspicion that the accused was guilty of the offence, and lacks the material ingredients necessary to establish guilt, the conviction will be quashed upon an appeal. R. v. Winslow (1899), 3 C. C. C., 215.

Where an alleged confession is received in evidence after objection by the accused, and the trial judge before the conclusion of the trial reverses his ruling and strikes out the evidence of the alleged confession, at the same time directing the jury to disregard it, the jury should be discharged and a new jury impanelled. If the trial judge refuses to impanel a new jury in such a case, a new trial will be ordered by a Court of Appeal. R. v. Sonyer (1898), 2 C. C. C., 501.

An accused person has the right to have his case submitted to the jury without any comment on his failure to testify being made by the trial judge, and although such comment is afterwards withdrawn, the making of same is a substantial wrong to the accused, and if he is convicted he is entitled to a new trial by reason thereof. R. v. Coleman (1898), 2 C. C. C., 523.

The Court of Appeal hearing a case reserved as to the validity of a sentence has power under this section to correct the erroneous sentence and to reduce it. R. v. Dupont (1900), 4 C. C. C., 566.

Where a verdict of not guilty is returned by the judge's direction after the evidence is heard, and a reserved case is taken to the Court of Appeal at the instance of the Crown upon the ground that the direction was erroneous and that it was for the jury and not for the judge to say whether a certain printed advertisement disclosed an unlawful intent, the Court of Appeal may decline to order a new trial, although it upholds the objection that such direction was erroneous. R. v. Karn (1903), 6 C. C. C., 479.

Notwithstanding the power to order a new trial upon a case reserved at the instance of the Crown, the accused should not ordinarily be put in jeopardy a second time for the same offence merely because his acquittal was due to an erroneous direction not resulting in a mis-trial. R. v. Karn, supra.

When a new trial has been ordered under this section by the Court of Appeal, upon an appeal from a trial with a jury, the prisoner is not entitled to re-elect in favour of a speedy trial without a jury. R. v. Coote (1903), 7 C. C. C., 92.

Code sec. 1018 is permissive and not obligatory as to the granting of a new trial upon reversing a judgment of acquittal, and the Appellate Court has a discretion to grant or refuse a new trial, or to make such other order as justice requires. R. v. Burr (1906), 12 C. C. C., 103.

1019. No substantial wrong, conviction stands.—Proviso.—No conviction shall be set aside nor any new trial directed, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial or some misdirection given, unless, in the opinion of the court of appeal, some substantial wrong or miscarriage was thereby occasioned on the trial: Provided that if the court of appeal is of opinion that any challenge for the defence was improperly disallowed, a new trial shall be granted. 55-56 V., c. 29, s. 746.

The intention of this section is that the improper admission of evidence shall not in itself constitute a sufficient reason for granting a new trial, and is not necessarily a "substantial wrong or miscarriage." (Makin v. New South Wales (1894), A. C., 57 distinguished). R. v. Woods (1897), 2 C. C. C., 159.

Where a deposition of a deceased witness taken on an inquiry before a magistrate has been improperly admitted in evidence at the trial, and is of such a nature that it must have influenced the jury in their verdict, its improper admission is a "substantial wrong" entitling the accused to a new trial. R. v. Hamilton (1898), 2 C. C. C., 390.

On a trial for murder, if the trial judge directs the jury that imminent peril of the prisoner's own life or of the lives of his family is a ground of justification for killing, in defence of his household, one of a party committing an unprovoked assault upon him, but does not direct them that a reasonable apprehension of immediate danger of *grievous bodily harm* to the prisoner or to his wife and family is an equal justification, such omission constitutes a substantial wrong or miscarriage occasioned on the trial, and a new trial should be ordered, where the circumstances shown in evidence are such as to point much more to the latter ground of justification than to the former. R. v. Theriault (1894), 2 C. C. C., 444.

Even if the judge's charge be erroneous in one respect, a new trial should not be granted if there was ample evidence of guilt apart from that

in question, and if, in the opinion of the Court of Appeal, no substantial wrong or miscarriage was occasioned by the error. R. v. Higgins (1902), 7 C. C. C., 68.

A person charged with perjury committed in a civil action is entitled to have put in evidence those parts of his testimony in the civil action which may explain or qualify the statements in respect of which the perjury is charged. The refusal to admit such testimony is a "substantial wrong" under this section. R. v. Coote (1903), 8 C. C. C., 199.

The reception of opinion testimony as to the illegality of transactions in stocks was improper, but as a case against the accused was sufficiently made out without that testimony, and the trial was without a jury, the conviction should stand under Code sec. 1019. R. v. Harkness (1905), 10 C. C. C., 199.

Where a conviction has been made without the legal proof required by law of an essential part of the crime, such defect is a "substantial wrong or miscarriage" at the trial within Code sec. 1019, and the conviction must be set aside. R. v. Drummond (1905), 10 C. C. C., 340.

If upon a case reserved, the appellate court finds that important depositions were improperly received in evidence, and is unable to say that no substantial wrong or miscarriage was occasioned by the irregularity, the conviction should be quashed notwithstanding Code sec. 1019, but a new trial may be ordered. R. v. Brooks (1906), 11 C. C. C., 188.

It is error and ground for a new trial for the trial judge to instruct the jury that they cannot doubt that certain inferences are to be drawn on points material to the issue. R. v. Collins (1907), 12 C. C. C., 402.

1020. Only one count affected sentence as to rest.—If it appears to the court of appeal that such wrong or miscarriage affected some count only of the indictment, the court may give separate directions as to each count, and may pass sentence on any count unaffected by such wrong or miscarriage which stands good, or may remit the case to the court below with directions to pass such sentence as justice may require.

2. **Order of court of appeal.**—The order or direction of the court of appeal shall be certified under the hand of the presiding chief justice or senior puisné judge to the proper officer of the court before which the case was tried, and such order or direction shall be carried into effect. 55-56 V., c. 29, s. 746.

1021. Leave to apply for new trial.—After the conviction of any person for any indictable offence the court before which the trial takes place may, either during the sitting or afterwards, give leave to the person convicted to apply to the court of appeal for a new trial on the ground that the verdict was against the weight of evidence.

2. **May grant new trial.**—The court of appeal may, upon hearing such motion, direct a new trial if it thinks fit.

3. **Leave by person presiding at sessions.**—In the case of a trial before a court of general or quarter sessions such leave may be given, during or at the end of the session, by the judge or other person who presided at the trial. 55-56 V., c. 29, s. 747.

It is the province of the jury, after taking into consideration the circumstances of a case and the character and demeanour of the witnesses, to discredit some of the witnesses and reject their evidence, and to believe others and accept their evidence; and when there is a conflict in the evidence, but there is evidence to support the verdict, it cannot be juridically maintained that the verdict is against the weight of evidence. When, however, there is no conflict in the evidence, and it tends indubitably in a direction favourable to the defendant, or does not establish his guilt, a verdict convicting the defendant would not be supported by nor be based upon proper evidence, and would manifestly be against the weight of evidence; and it is only in cases like this, where there is an absolute failure of evidence to sustain the verdict, that the Court can give leave to apply to the Court of Appeal for a new trial. R. v. Harris (1898), 2 C. C. C., 75.

In deciding whether there should be a new trial on the ground that the verdict against the accused was against the weight of evidence, the question is whether or not the verdict is one which the jury, as reasonable men, ought not to have found. A new trial will not be granted merely because the trial judge is dissatisfied with the verdict and favors an acquittal. R. v. Brewster (1896), 4 C. C. C., 34.

An objection to a verdict on the ground that it is against the weight of evidence can only be raised by obtaining leave from the trial Court under Code sec. 1021 to apply to the Court of Appeal for a new trial. R. v. Carlin (1903), 6 C. C. C., 507.

There is no provision in the Criminal Code authorizing the Court to grant a new trial to the Crown on the ground that the verdict of acquittal is against the weight of evidence. R. v. Phinney (1903), 7 C. C. C., 280.

A motion for a new trial on the facts can only be made before the Court of Appeal, upon leave therefor granted by the Court before which the trial has taken place. R. v. Fouquet (1905), 10 C. C. C., 255.

Leave to apply to the Court of Appeal for a new trial in a criminal case under Code sec. 1021, on the ground that the verdict is against the weight of evidence, should only be granted when the verdict is so clearly against the evidence as to amount to a denial of justice. A new trial should not be granted merely because the jury has disregarded the uncorroborated testimony of the accused as to alleged facts which might relieve him from liability. R. v. Molleur (1905), 12 C. C. C., 16.

1022. New trial by order of Minister of Justice.—If upon any application for the mercy of the Crown on behalf of any person convicted of an indictable offence, the Minister of Justice entertains a doubt whether such person ought to have been convicted, he may, instead of advising His Majesty to remit or commute the sentence. after such inquiry as he thinks proper, by an order in writing direct a new trial at such time and before such court as he may think proper. 55-56 V., c. 29, s. 748.

New trial granted by the Minister of Justice, in R. v. Sternaman (1898), 1 C. C. C., 1.

1023. Suspension of sentence in case of appeal.—The sentence of a court shall not be suspended by reason of any appeal, unless the court expressly so directs, except where the sentence is that the accused suffer death or whipping.

2. **Suspension in case of sentence of death or whipping.**—The production of a certificate from the officer of the court that

a question has been reserved, or that leave has been given to apply for a new trial, or of a certificate from the Minister of Justice that he has directed a new trial, shall be a sufficient warrant to suspend the execution of any sentence of death or whipping.

3. **Bail.**—In all cases it shall be in the discretion of the court of appeal in directing a new trial to order the accused to be admitted to bail. 55-56 V., c. 29, s. 749.

1024. Appeal to Supreme Court of Canada.—Proviso.—None if court unanimous.—Any person convicted of any indictable offence, whose conviction has been affirmed on an appeal taken under section ten hundred and thirteen may appeal to the Supreme Court of Canada against the affirmance of such conviction: Provided that no such appeal can be taken if the court of appeal is unanimous in affirming the conviction, nor unless notice of appeal in writing has been served on the Attorney General within fifteen days after such affirmance or such further time as may be allowed by the Supreme Court of Canada or a judge thereof.

2. **Order of Supreme Court of Canada.**—The Supreme Court of Canada shall make such rule or order thereon, either in affirmance of the conviction or for granting a new trial, or otherwise, or for granting or refusing such application, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect.

3. **Hearing of appeal.—Abandonment.**—Unless such appeal is brought on for hearing by the appellant at the session of the Supreme Court during which such affirmance takes place, or the session next thereafter if the said court is not then in session, the appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court or a judge thereof.

4. **Judgment final.**—The judgment of the Supreme Court shall, in all cases, be final and conclusive. 55-56 V., c. 29, s. 750.

Where the decision is in favor of the prisoner the Supreme Court of Canada, exercising the ordinary appellate powers of the Court, may give the judgment which the court whose judgment is appealed from ought to have given, and may order the prisoner's discharge. R. v. Laliberte (1877), 1 S. C. R., 117.

If by the decision of the Court of Appeal, the conviction is set aside and a new trial ordered, there is no appeal therefrom to the Supreme Court of Canada.

The dissent from the "opinion" of the majority by any of the judges of the Court of Appeal which is necessary in order to confer the right of a further appeal to the Supreme Court of Canada has reference to the "decision" or "judgment" of such majority in affirmance of a conviction; and where a majority of the Court of Appeal in directing a new trial also

expressed their concurrence (two of them dissenting) with that part of the decision appealed from by which it was held that certain evidence was properly admitted, the latter decision is not reviewable by the Supreme Court of Canada. Viau v. R. (1898), 2 C. C. C., 540.

Where an appeal lies from the Court of Appeal for Ontario to the Supreme Court of Canada, only where special leave is obtained from either of said Courts, leave should be refused unless special reasons are shewn apart from the alleged error in the decision sought to be reviewed. Attorney-General for Ontario v. Scully (1902), 6 C. C. C., 381.

The power given by Code sec. 1024 to a judge of the Supreme Court of Canada to extend the time for service on the Attorney-General of notice of an appeal in a Crown case reserved may be exercised after the expiration of the time for the service of such notice. Gilbert v. R. (1907), 12 C. C. C., 124.

1025. Arpeals to Privy Council abolished.—Notwithstanding any royal prerogative or anything contained in the Interpretation Act or in the Supreme Court Act no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal or authority, by which in the United Kingdom appeals or petitions to His Majesty in Council may be heard. 55-56 V., c. 29, s. 751.

PART XX.

PUNISHMENTS, FINES, FORFEITURES, COSTS, AND RESTITUTION OF PROPERTY.

INTERPRETATION.

1026. Definition, 'court' in ss. 1081, 1082 and 1083.—In the sections of this Part relating to suspended sentence, unless the context otherwise requires, 'court' means and includes any superior court of criminal jurisdiction, any judge or court within the meaning of Part XVIII. and any magistrate within the meaning of Part XVI. 55-56 V., c. 29, s. 974.

PUNISHMENT GENERALLY.

1027. Punishment only after conviction.—Whenever a person doing a certain act is declared to be guilty of any offence, and to be liable to punishment therefor, it shall be understood that such person shall only be deemed guilty of such offence and liable to such punishment after being duly convicted of such act. 55-56 V., c. 29, s. 931.

1028. Degrees in punishment.—Discretion.—Whenever it it provided that the offender shall be liable to different degrees or

kinds of punishment, the punishment to be inflicted shall, subject to the limitations contained in the enactment, be in the discretion of the court or tribunal before which the conviction takes place. 55-56 V., c. 29, s. 932.

Where a statute of Canada imposes a fine and also imprisonment the punishment is in the discretion of the Court, which is not bound to inflict both, but may inflict either one or the other of the two kinds of punishment by virtue of this section. R. v. Robidoux (1898), 2 C. C. C., 19; Ex parte Kent (1903), 7 C. C. C., 447.

1029. Fine or penalty in discretion of court.—Whenever a fine may be awarded or a penalty imposed for any offence, the amount of such fine or penalty shall, within such limits, if any, as are prescribed in that behalf, be in the discretion of the court or person passing sentence or convicting, as the case may be. 55-56 V., c. 29, s. 934.

R. v. Union Colliery Co. (1900), 3 C. C. C., 523; 31 S. C. R., 81.

PUNISHMENTS ABOLISHED.

1030. Outlawry.—Outlawry in criminal cases is abolished. 55-56 V., c. 29, s. 962.

1031. Solitary confinement or pillory.—The punishment of solitary confinement or of the pillory shall not be awarded by any court. 55-56 V., c. 29, s. 963.

1032. Deodand.—There shall be no forfeiture of any chattels, which have moved to or caused the death of any human being, in respect of such death. 55-56 V., c. 29, s. 964.

1033. Attainder.— Penalty.— Forfeiture.—No confession, verdict, inquest, conviction or judgment of or for any treason or indictable offence or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat: Provided that nothing in this section shall affect any penalty or fine imposed on any person by virtue of his sentence, or any forfeiture in relation to which special provision is made by any Act of the Parliament of Canada. 55-56 V., c. 29, s. 965.

DISABILITIES.

1034. Conviction of public official vacates office.—If any person hereafter convicted of treason or any indictable offence for which he is sentenced to death, or imprisonment for a term exceeding five years, holds at the time of such conviction

any office under the Crown or other public employment, or is entitled to any pension or superannuation allowance payable by the public, or out of any public fund, such office or employment shall forthwith become vacant, and such pension or superannuation allowance or emolument shall forthwith determine and cease to be payable, unles such person receives a free pardon from His Majesty, within two months after such conviction, or before the filling up of such office or employment, if given at a later period.

2. **Official incompetent until punishment undergone or pardon.**—Every such person sentenced to imprisonment as aforesaid or on whom sentence of death has been passed which has been commuted to imprisonment, shall become, and, until he undergoes the imprisonment aforesaid or suffers such other punishment as by competent authority is substituted for the same, or receives a free pardon from His Majesty, shall continue incapable of holding any office under the Crown, or other public employment, or of being elected, or sitting, or voting, as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise.

3. **Removing disability.**—The setting aside of a conviction by competent authority shall remove the disability by this section imposed. 55-56 V., c. 29, s. 961.

FINES AND FORFEITURES.

1035. Fines in lieu of other punishment.—Any person convicted by any magistrate under Part XVI. or by any court of an indictable offence punishable with imprisonment for five years or less may be fined in addition to, or in lieu of any punishment otherwise authorized, in which case the sentence may direct that in default of payment of his fine the person so convicted shall be imprisoned until such fine is paid, or for a period not exceeding five years, to commence at the end of the term of imprisonment awarded by the sentence, or forthwith as the case may require.

2. **Fines in addition to other punishment.**—Any person convicted of an indictable offence punishable with imprisonment for more than five years may be fined, in addition to, but not in lieu of, any punishment otherwise ordered, in such case, also, the sentence may in like manner direct imprisonment in default of payment of any fine imposed. 63-64 V., c. 46, s. 3.

A person accused of having assaulted a peace officer was convicted of the offence at the County Court sittings, and was sentenced to one month in jail and fined $50.00. Sec. 296 states that "every one is guilty of an indictable offence and liable to two years' imprisonment who assaults any public or peace officer, etc." Objection was taken to this conviction on the

ground that both fine and imprisonment could not be imposed. It was held that this section gave power to do so. Ex parte McClements (1895), 32 C. L. J., 39.

The accused was convicted of larceny and sentenced to three months' imprisonment. Upon the return of a writ of *habeas corpus* a motion was made for his discharge, upon the ground, *inter alia*, that the sentence, as expressed in the commitment, was imprisonment only in default of payment of an imposed fine for which there was no authority. Held, that this objection was not tenable under this section. R. v. Mooney (1898), 19 C. L. T., 17.

1036. Fines, penalties and forfeitures go to provincial treasurer.—Whenever no other provision is made by any law of Canada for the application of any fine, penalty or forfeiture imposed for the violation of any law or of the proceeds of an estreated recognizance, the same shall be paid over by the magistrate or officer receiving the same to the treasurer of the province in which the same is imposed or recovered, to be by him paid over to the municipal or local authority, if any, which wholly or in part bears the expenses of administering the law under which the same was imposed or recovered, or to be applied in any other manner deemed best adapted to attain the objects of such law and secure its due administration, except that,—

(a) **Exception, revenue laws, etc.**—All fines, penalties and forfeitures imposed in respect of the breach of any of the revenue laws of Canada, or imposed upon any officer or employee of the Government of Canada in respect of any breach of duty or malfeasance in his office or employment, and the proceeds of all recognizances estreated in connection with proceedings for the prosecution of persons charged with such breaches or malfeasance; and,

(b) **Where costs of prosecution borne by Canada.**—All fines, penalties and forfeitures imposed for whatever cause in any proceeding instituted at the instance of the Government of Canada or of any department thereof in which that Government bears the cost of prosecution, and the proceeds of all recognizances estreated in connection with such proceedings, shall belong to His Majesty for the public uses of Canada, and shall be paid by the magistrate or officer receiving the same to the Minister of Finance and form part of the Consolidated Revenue Fund of Canada.

2. **Right of private prosecutor.**—Nothing in this section contained shall affect any right of a private person suing as well for His Majesty as for himself, to the moiety of any fine, penalty or forfeiture recovered in his suit. 63-64 V., c. 46, s. 3.

1037. Direction to pay fine, penalty or forfeiture to municipality.—The Governor in Council may, from time to time,

direct that any fine, penalty or forfeiture, or any portion thereof, which would otherwise belong to the Crown for the public uses of Canada, be paid to any provincial, municipal or local authority, which wholly or in part bears the expenses of administering the law under which such fine, penalty or forfeiture is imposed, or that the same be applied in any other manner deemed best adapted to attain the objects of such law and to secure its due administration. 55-56 V., c. 29, s. 928.

See in re Baker (1899), 20 C. L. T., 16.

1038. Recovering by civil action when no other provision.—Whenever any pecuniary penalty or any forfeiture is imposed for any violation of any Act, and no other mode is prescribed for the recovery thereon, such penalty or forfeiture shall be recoverable or enforceable, with costs, in the discretion of the court, by civil action or proceeding at the suit of His Majesty only, or of any private party suing as well for His Majesty as for himself in any form of action allowed in such case by the law of the province in which it is brought, and before any court having jurisdiction to the amount of the penalty in cases of simple contract.

2. **Moiety to private party when no other provision.**—If no other provision is made for the appropriation of any penalty or forfeiture so recovered or enforced, one moiety shall belong to His Majesty and the other moiety shall belong to the private party suing for the same, if any, and if there is none, the whole shall belong to His Majesty. 55-56 V., c. 29, s. 929.

1039. Goods forfeited under Part VII.—Reimbursement of innocent party.—Any goods or things forfeited under any provision of Part VII. relating to forgery of trade marks and the fraudulent marking of merchandise, may be destroyed or otherwise disposed of in such manner as the court, by which the same are declared forfeited, directs; and the court may, out of any proceeds realized by the disposition of such goods, after all trade marks and trade descriptions are obliterated, award to any innocent party any loss he may have innocently sustained in dealing with such goods. 51 V., c. 41, s. 15.

1040. Costs in such prosecutions.—On any prosecution under this Act relating to the said last mentioned provisions, the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively. 51 V., c. 41, s. 16.

1041. Application of fines in relation to coin.—A moiety of any of the penalties imposed under sections five hundred and sixty-seven, six hundred and twenty-four, six hundred and twenty-five and six hundred and twenty-six, shall belong to the informer or person who sues for the same, and the other moiety shall belong to His Majesty for the public uses of Canada. R.S., c. 167, s. 34.

1042. Application of fines in relation to deserters or their effects.—One moiety of the amount of any penalty recovered under sections eighty-two, eighty-three, four hundred and thirty-eight, four hundred and thirty-nine or six hundred and fifty-seven, shall be paid over to the prosecutor or person by whose means the offender has been convicted, and the other moiety shall belong to the Crown. R.S., c. 169, s. 9.

1043. Application of fines in relation to cruelty to animals.—One moiety of every pecuniary penalty recovered with respect to any offence under section five hundred and forty-two or five hundred and forty-three shall be paid over to the corporation of the city, town, village, township, parish, or place in which the offence was committed, and the other moiety, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the justices seems proper. R.S., c. 172, s. 7.

COSTS, PECUNIARY COMPENSATION AND RESTITUTION OF PROPERTY.

1044. Costs and expenses of prosecution may be ordered to be paid by party convicted.—Any court by which and any judge under Part XVIII., or magistrate under Part XVI., by whom judgment is pronounced or recorded, upon the conviction of any person for treason or any indictable offence, in addition to such sentence as may otherwise by law be passed, may condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted, if to such court or judge it seems fit so to do.

2. **Also allowance for loss of time.**—Such court or judge may include in the amount to be paid such moderate allowance for loss of time as the court or judge, by affidavits or other inquiry and examination, ascertains to be reasonable.

3. **Source from which payment obtained.**—The payment of

such costs and expenses, or any part thereof, may be ordered by the court or judge to be made out of any moneys taken from such person on his apprehension, if such moneys are his own, or may be enforced at the instance of any person liable to pay or who has paid the same in such and the same manner, subject to the provisions of this Act, as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding may for the time being be enforced.

4. **Payable from official fund.—Reimbursement.**—In the meantime, until the recovery of such costs and expenses from the person so convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this section had not been passed; and any money which is recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses have been paid or defrayed. 63-64 V., c. 46, s. 3.

1045. Defendant recovers costs in case of libel.—In the case of an indictment or information by a private prosecutor for the publication of a defamatory libel, if judgment is given for the defendant, he shall be entitled to recover from the prosecutor the costs incurred by him by reason of such indictment or information, either by warrant of distress issued out of the said court, or by action or suit as for an ordinary debt. 55-56 V., c. 29, s. 833.

See R. v. Nichol (1901), 6 C. C. C., 8; Nichol v. Pooley (1902), 6 C. C. C., 12, 269.

The discharge of the accused upon the entry of a *nolle prosequi* by the Attorney General to an indictment for criminal libel is a judgment for the defendant entitling him under Code sec. 1045 to his costs against the private prosecutor. R. v. Blackley (1904), 8 C. C. C., 405.

1046. Imprisonment in default of payment of costs on conviction for assault.—If a person convicted on an indictment for assault, whether with or without battery and wounding, is ordered to pay costs as aforesaid, he shall be liable, unless the said costs are sooner paid, to three months' imprisonment, in addition to the term of imprisonment, if any, to which he is sentenced for the offence, and the court may, by warrant in writing, order the amount of such costs to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and the surplus, if any, arising from such sale, to the owner.

2. **Release on levy.**—If such sum is so levied, the offender shall be released from such imprisonment. 55-56 V., c. 29, s. 834.

1047. Taxation of costs on lowest scale.—Any costs ordered to be paid by a court pursuant to the foregoing provisions shall, in case there is no tariff of fees provided with respect to criminal proceedings, be taxed by the proper officer of the court according to the lowest scale of fees allowed in such court in a civil suit.

2. **Scale in civil suits.**—If such court has no civil jurisdiction, the fees shall be those allowed in civil suits in a superior court of the province according to the lowest scale. 55-56 V., c. 29, s. 835.

R. v. St. Louis (1897), 1 C. C. C., 141; Nichol v. Pooley (1902), 6 C. C. C., 12, 269; R. v. Gouillioud (1903), 7 C. C. C., 432.

1048. Compensation for loss of property.—A court on the trial of any person on an indictment may, if it thinks fit, upon the application of any person aggrieved and immediately after the conviction of the offender, award any sum of money, not exceeding one thousand dollars, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the offence of which such person is so convicted.

2. **Award and judgment.**—The amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs aforesaid ordered by the court to be paid. 55-56 V., c. 29, s. 836.

1049. Compensation to "bona fide" purchasers of stolen property.—When any prisoner has been convicted, either summarily or otherwise, of any theft or other offence, including the stealing or unlawfully obtaining any property, and it appears to the court, by the evidence, that the prisoner sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained, and that money has been taken from the prisoner on his apprehension, the court may, on application of such purchaser and on restitution of the property to its owner, order that out of the money so taken from the prisoner, if it is his, a sum not exceeding the amount of the proceeds of the sale be delivered to such purchaser. 55-56 V., c. 29, s. 837.

1050. Restitution of stolen property.—If any person who is guilty of an indictable offence in stealing, or knowingly receiving, any property, is indicted for such offence, by or on behalf of

the owner of the property, or his executor or administrator, and convicted thereof, or is tried before a judge or justice for such offence under any of the foregoing provisions and convicted thereof, the property shall be restored to the owner or his representative.

2. **Writs of restitution.**—In every such case the court or tribunal before which such person is tried for any such offence, shall have power to award, from time to time, writs of restitution for the said property or to order the restitution thereof in a summary manner.

3. **Restitution although no conviction.**—The court or tribunal may also, if it sees fit, award restitution of the property taken from the prosecutor, or any witness for the prosecution, by such offence, although the person indicted is not convicted thereof, if the jury declares, as it may do, or if, in case the offender is tried without a jury, it is proved to the satisfaction of the court or tribunal by whom he is tried, that such property belongs to such prosecutor or witness, and that he was unlawfully deprived of it by such offence.

4. **Restitution not ordered in case of valuable security when rights of third parties intervene.**—If it appears before any award or order is made, that any valuable security has been *bona fide* paid or discharged by any person liable to the payment thereof, or being a negotiable instrument, has been *bona fide* taken or received by transfer or delivery, by any person, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had, by any indictable offence, been stolen, or if it appears that the property stolen has been transferred to an innocent purchaser for value who has acquired a lawful title thereto, the court or tribunal shall not award or order the restitution of such security or property.

5. **Saving.**—Nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker or other agent entrusted with the possession of goods or documents of title to goods, for any indictable offence under sections three hundred and fifty-eight or three hundred and ninety of this Act. 55-56 V., c. 29, s. 838; 56 V., c. 32, s. 1.

To entitle the aggrieved party to an order for the restitution to him of money found on the prisoner convicted of stealing money from the person, proof must be adduced identifying the money so found as the money which was stolen. R. v. Haverstock (1901), 5 C. C. C., 113.

Where the accused was convicted of the theft of bank notes, but there was no evidence to identify the same with the bank notes found on and

taken from the prisoner, at the time of arrest, and no application was made immediately after the conviction for an order of compensation to the prosecutor for his loss, an order may be properly made ex parte for the restoration to the prisoner of the money so taken from him. R. v. Haverstock, supra.

IMPRISONMENT.

1051. Offences not capital how punished.—Every one who is convicted of any offence not punishable with death, shall be punished in the manner, if any, prescribed by the statute especially relating to such offence. 55-56 V., c. 29, s. 950.

1052. When no provision.—Indictable offence.—Every person convicted of any indictable offence for which no punishment is specially provided, shall be liable to imprisonment for five years.

2. **Summary conviction.**—Every one who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding fifty dollars, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both. 55-56 V., c. 29, s. 951; 56 V., c. 32, s. 1.

1053. Punishment for second offence.—Every one who is convicted of an indictable offence not punishable with death, committed after a previous conviction for an indictable offence, is liable to imprisonment for ten years, unless some other punishment is directed by any statute for the particular offence.

2. **Fixed by statute.**—In such latter case the offender shall be liable to the punishment directed, and not to any other. 55-56 V., c. 29, s. 952.

1054. Maximum term shortened.—Minimum term.—Every one who is liable to imprisonment for life, or for any term of years, or other term, may be sentenced to imprisonment for any shorter term: Provided that no one shall be sentenced to any shorter term of imprisonment than the minimum term, if any, prescribed for the offence of which he is convicted. 55-56 V., c. 29, s. 953.

Where a statute of Canada imposes a fine and also imprisonment the punishment is in the discretion of the Court, which is not bound to inflict both, but may inflict either one or the other of the two kinds of punishment by virtue of Code sec. 1028. R. v. Robidoux (1898), 2 C. C. C., 19; Meunier v. Loupret and Simpson (1899), 2 Q. P. R., 126.

1055. Cumulative punishments.—When an offender is convicted of more offences than one, before the same court or person at the same sitting, or when any offender, under sentence or undergoing punishment for one offence, is convicted of any other offence, the court or person passing sentence may, on the last conviction, direct that the sentences passed upon the offender for his several offences shall take effect one after another. 55-56 V., c. 29, s. 954.

There is no presumption that sentences passed at the one time are to be concurrent and a prisoner convicted at the one time of two offences and sentenced on each to three months' imprisonment without specification as to the terms being concurrent or otherwise, is not entitled to a discharge on habeas corpus after three months' imprisonment. Ex parte Bishop (1895), 1 C. C. C., 118.

1056. Imprisonment less than two years, in gaol, etc.—Proviso.—Every one who is sentenced to imprisonment for a term less than two years shall, if no other place is expressly mentioned, be sentenced to imprisonment in the common gaol of the district, county or place in which the sentence is pronounced, or if there is no common gaol there, then in that common gaol which is nearest to such locality, or in some lawful prison or place of confinement, other than a penitentiary, in which the sentence of imprisonment may be lawfully executed: Provided that,—

(a) **Where other sentence at same sittings, to penitentiary.**—When any one is sentenced to imprisonment in a penitentiary, and at the same sittings or term of the court trying him is sentenced for one or more other offences to a term or terms of imprisonment less than two years each, he may be sentenced for such shorter terms to imprisonment in the same penitentiary, such sentences to take effect from the termination of his other sentence; and,

(b) **Or if term in penitentiary running.**—When any one is sentenced for any offence who is, at the date of such sentence, serving a term of imprisonment in a penitentiary for another offence, he may be sentenced for a term shorter than two years to imprisonment in the same penitentiary, such sentence to take effect from the termination of his existing sentence or sentences;

(c) **In Manitoba, to any common gaol.**—In the province of Manitoba, any one sentenced to imprisonment for a term less than two years may be sentenced to imprisonment in any one of the common gaols in that province unless a special prison is provided by law. 55-56 V., c. 29, s. 955; 63-64 V., c. 46, s. 3; 1 E. VII., c. 42, s. 2.

1057. Imprisonment with or without hard labour.—Imprisonment in a common gaol, or a public prison, other than a penitentiary or the Central Prison for the province of Ontario, the Andrew Mercer Ontario Reformatory for females or any reformatory prison for females in the province of Quebec, shall be with or without hard labour, in the discretion of the court or person passing sentence, if the offender is convicted on indictment, or under the provisions of Parts XVI. or XVIII., or, in the province of Saskatchewan or Alberta, before a judge of a superior court, or in the Northwest Territories, before a stipendiary magistrate or in the Yukon Territory, before a judge of the Territorial Court.

2. **Hard labour part of punishment.**—In other cases such imprisonment may be with hard labour, if hard labour is part of the punishment for the offence of which such offender is convicted, and if such imprisonment is to be with hard labour, the sentence shall so direct. 55-56 V., c. 29, s. 955.

PROVISIONS AS TO SURETIES.

1058. Persons convicted may be bound over to keep the peace.—Committal in default.—Every magistrate under Part XVI. and every court of criminal jurisdiction before whom any person is convicted of an offence and is not sentenced to death, shall have power, in addition to any sentence imposed upon such person, to require him forthwith to enter into his own recognizances, or to give security to keep the peace, and be of good behaviour for any term not exceeding two years, and that such person in default shall be imprisoned for not more than one year after the expiry of his imprisonment under his sentence, or until such recognizances are sooner entered into or such security sooner given.

2. Any such recognizance may be in form 49. 63-64 V., c. 46, s. 3.

1059. Proceedings when party remains in prison for two weeks.—Whenever any person who has been required to enter into a recognizance with sureties, to keep the peace and be of good behaviour, or not to engage in any prize-fight has, on account of his default therein, remained imprisoned for two weeks, the sheriff, gaoler or warden shall give notice, in writing, of the facts, to a judge of a superior court, or to a judge of the county court of the county or district in which such gaol or prison is situate, or, in the cities of Montreal and Quebec, to a a judge of the sessions of the peace for the district, or, in the Northwest Territories, to a stipendiary magistrate.

2. **Procedure when brought up.**—Such judge or magistrate may order the discharge of such person, thereupon or at a subsequent time, upon notice to the complainant or otherwise, or may make such other order as he sees fit, respecting the number of sureties, the sum in which they are to be bound and the length of time for which such person may be bound. 55-56 V., c. 29, s. 960.

WHIPPING.

1060. Sentence of punishment by whipping.—Whenever whipping may be awarded for any offence, the court may sentence the offender to be once, twice or thrice whipped, within the limits of the prison, under the supervision of the medical officer of the prison, or if there be no such officer, or if the medical officer be for any reason unable to be present, then, under the supervision of a surgeon or physician to be named by the Minister of Justice, in the case of prisons under the control of the Dominion, and in the case of other prisons by the attorney general of the province in which such prison is situated.

2. **Number of strokes.—Instrument.**—The number of strokes shall be specified in the sentence; and the instrument to be used for whipping shall be a cat-o'-nine tails unless some other instrument is specified in the sentence.

3. **When whipping to take place.**—Whenever practicable, every whipping shall take place not less than ten days before the expiration of any term of imprisonment to which the offender is sentenced for the offence.

4. **Not on female.**—Whipping shall not be inflicted on any female. 63-64 V., c. 46, s. 3.

CAPITAL PUNISHMENT.

1061. Punishment to be the same on conviction by verdict or by confession.—Every one who is indicted as principal or accessory for any offence made capital by any statute, shall be liable to the same punishment, whether he is convicted by verdict or on confession, and this as well in the case of accessories as of principals. 55-56 V., c. 29, s. 935.

1062. Form of sentence of death.—In all cases where an offender is sentenced to death, the sentence or judgment to be pronounced against him shall be that he be hanged by the neck until he is dead. 55-56 V., c. 29, s. 936.

1063. Sentence of death to be reported to Secretary of State.—In the case of any prisoner sentenced to the punishment of death, the judge before whom such prisoner has been convicted shall forthwith make a report of the case to the Secretary of State, for the information of the Governor General; and the day to be appointed for carrying the sentence into execution shall be such as, in the opinion of the judge, will allow sufficient time for the signification of the Governor's pleasure before such day.

2. **Judge may grant reprieve in certain cases.**—If the judge thinks such prisoner ought to be recommended for the exercise of the royal mercy, or if, from the non-decision of any point of law reserved in the case, or from any other cause, it becomes necessary to delay the execution, he, or any other judge of the same court, or any judge who might have held or sat in such court, may, from time to time, either in term or in vacation, reprieve such offender for such period or periods beyond the time fixed for the execution of the sentence as are necessary for any of the purposes aforesaid. 55-56 V., c. 29, s. 937.

1064. Prisoner under sentence of death to be confined apart.—Every one who is sentenced to suffer death shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners; and no person except the gaoler and his servants, the medical officer or surgeon of the prison and a chaplain or a minister of religion, shall have access to any such convict, without permission, in writing, of the court or judge before whom such convict has been tried, or of the sheriff. 55-56 V., c. 29, s. 938.

1065. Place of execution.—Judgment of death to be executed on any prisoner shall be carried into effect within the walls of the prison in which the offender is confined at the time of execution. 55-56 V., c. 29, s. 939.

1066. Persons who shall be present at execution.—The sheriff charged with the execution, and the gaoler and medical officer or surgeon of the prison, and such other officers of the prison and such persons as the sheriff requires, shall be present at the execution. 55-56 V., c. 29, s. 940.

1067. Persons who may be present at execution.—Any justice for the district, county or place to which the prison belongs, and such relatives of the prisoner or other persons as it seems to the sheriff proper to admit within the prison for the pur-

pose, and any minister of religion who desires to attend, may also be present at the execution. 55-56 V., c. 29, s. 941.

1068. Certificate of death by surgeon.—As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof, in form 71, and deliver the same to the shriff.

2. **Declaration by sheriff and goaler.**—The sheriff and the gaoler of the prison, and such justices and other persons present, if any, as the sheriff requires or allows, shall also sign a declaration in form 72 to the effect that judgment of death has been executed upon the offender. 55-56 V., c. 29, s. 942.

1069. Deputies may act.—The duties imposed upon the sheriff, gaoler, medical officer or surgeon by the three sections last preceding, may be, and, in his absence, shall be performed by his lawful deputy or assistant, or other officer or person ordinarily acting for him, or conjointly with him, or discharging the duties of any such officer. 63-64 V., c. 46, s. 3.

1070. Inquest.—A coroner of a district, county or place to which the prison belongs wherein judgment of death is executed on any offender shall, within twenty-four hours after the execution, hold an inquest on the body of the offender.

2. **Identity and death.**—The jury at the inquest shall inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender.

3. **In duplicate.**—The inquisition shall be in duplicate, and one of the orginals shall be delivered to the sheriff.

4. **Jurors.**—No officer of the prison and no prisoner confined therein shall, in any case, be a juror on the inquest. 55-56 V., c. 29, s. 944.

1071. Place of burial.—The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him, unless the Lieutenant Governor in Council orders otherwise. 55-56 V., c. 29, s. 945.

1072. Certificate to be sent to Secretary of State and exhibited at prison.—Every certificate and declaration, and a duplicate of the inquest required by this Part shall in every case be sent with all convenient speed by the sheriff to the Secretary of

State, or to such other officer as is, from time to time, appointed for the purpose by the Governor in Council.

2. **Copies exhibited in prison.**—Printed copies of such several instruments shall as soon as possible, be exhibited and shall, for twenty-four hours at least, be kept exhibited on or near the principal entrance of the prison within which judgment of death has been executed. 55-56 V., c. 29, s. 946.

1073. Omission not to make execution illegal.—The omission to comply with any provision of the preceding sections of this Part shall not make the execution of judgment of death illegal in any case in which such execution would otherwise have been legal. 55-56 V., c. 29, s. 947.

1074. Forms of procedure in other respects.—Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if the above provisions had not been passed. 55-56 V., c. 29, s. 948.

1075. Rules and regulations as to executions.—The Governor in Council may, from time to time make such rules and regulations to be observed on the execution of judgment of death in every prison, as he, from time to time, deems expedient for the purpose, as well of guarding against any abuse in such execution, as of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place.

2. **Laid before Parliament.**—All such rules and regulations shall be laid upon the tables of both Houses of Parliament within six weeks after the making thereof, or, if Parliament is not then sitting, within fourteen days after the next meeting thereof. 55-56 V., c. 29, s. 949.

PARDON.

1076. Any person imprisoned under statute although for non-payment of money.—The Crown may extend the royal mercy to any person sentenced to imprisonment by virtue of any statute, although such person is imprisoned for non-payment of money to some other person than the Crown.

2. **Discharge under pardon with performance of conditions if any has effect of pardon under great seal.**—Whenever the Crown is pleased to extend the royal mercy to any offender convicted of an indictable offence punishable with death or otherwise, and grants to such offender either a free or condi-

tional pardon, by warrant under the royal sign manual, countersigned by one of the principal Secretaries of State, or by warrant under the hand and seal-at-arms of the Governor-General, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall, as to the offence of which he has been convicted, have the same effect as a pardon of such offender under the great seal.

3. **No effect on punishment for subsequent offence.**—No free pardon, nor any discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any offence other than that for which the pardon was granted. 55-56 V., c. 29, s. 966.

See Attorney General for Canada v. Attorney General of Ontario (1892), 19 Ont. App., 31, 35.

1077. Commutation of sentence.—The Crown may commute the sentence of death passed upon any person convicted of a capital offence to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in any gaol or other place of confinement for any period less than two years, with or without hard labour.

2. **Instrument under hand and seal of Governor, or letter, etc., from Secretary of State sufficient for commutation.**—An instrument under the hand and seal-at-arms of the Governor General, declaring such commutation of sentence, or a letter or other instrument under the hand of the Secretary of State or of the Under Secretary of State, shall be sufficient authority to any judge or justice, having jurisdiction in such case, or to any sheriff or officer to whom such letter or instrument is addressed, to give effect to such commutation, and to do all such things and to make such orders, and to give such directions, as are requisite for the change of custody of such convict, and for his conduct to and delivery at such gaol or place of confinement or penitentiary, and his detention therein, according to the terms on which his sentence has been commuted. 55-56 V., c. 29, s. 967.

See Attorney General for Canada v. Attorney General of Ontario (1892), 19 Ont. App., 31; 23 S. C. R., 458.

1078. Undergoing sentence equivalent to a pardon.—When any offender has been convicted of an offence not punishable with death, and has endured the punishment adjudged, or has

been convicted of an offence punishable with death and the sentence of death has been commuted, and the offender has endured the punishment to which his sentence was commuted, the punishment so endured shall, as to the offence whereof the offender was so convicted, have the like effect and consequences as a pardon under the great seal.

2. **No effect on punishment for subsequent offence.**—Nothing in this section contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other offence. 55-56 V., c. 29, s. 968.

1079. Release from all further proceedings for same offence.—When any person convicted of any offence has paid the sum adjudged to be paid, together with costs, if any, under such conviction, or has received a remission thereof from the Crown, or has suffered the imprisonment awarded for non-payment thereof, or the imprisonment awarded in the first instance, or has been discharged from his conviction by the justice in any case in which such justice may discharge such person, he shall be released from all further or other criminal proceedings for the same cause. 55-56 V., c. 29, s. 969.

1080. Royal prerogative.—Nothing in this Part shall in any manner limit or affect His Majesty's royal prerogative of mercy. 55-56 V., c. 29, s. 970.

SUSPENDED SENTENCE.

1081. Suspension of sentence by court when imprisonment not more than two years.—In any case in which a person is convicted before any court of any offence punishable with not more than two years' imprisonment, and no previous conviction is proved against him, if it appears to the court before which he is so convicted, that, regard being had to the age, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance, with or without sureties, and during such period as the court directs, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour.

2. **When more than two years.**—Where the offence is punishable with more than two years' imprisonment the court shall have the same power as aforesaid with the concurrence of the counsel acting for the Crown in the prosecution of the offender.

3. **Special directions in such cases.**—The court may, if it thinks fit, direct that the offender shall pay the costs of the prosecution, or some portion of the same, within such period and by such instalments as the court directs. 63-64 V., c. 46, s. 3.

Upon a summary trial the magistrate is a "court" within the meaning of Code secs. 1081 and 1026.

If no previous conviction is proved against the accused upon a summary trial for an indictable offence, and the magistrate's power to award imprisonment is limited to a term of less than two years, such magistrate may upon conviction release the accused upon suspended sentence. R. v. McLellan (1905), 10 C. C. C., 1.

Where the person convicted upon a summary trial is released upon suspended sentence and is directed to pay the informant's costs, such costs are payable forthwith unless otherwise ordered. The power under Code sec. 1081 to award such costs to be paid "within such period and by such instalments as the court directs" does not make it necessary to divide the costs into instalments. R. v. McLellan, supra.

1082. Conditions of release.—The court, before directing the release of an offender under the last preceding section, shall be satisfied that the offender or his surety has a fixed place of abode or regular occupation in the county or place for which the court acts, or in which the offender is likely to live during the period named for the observance of the conditions. 55-56 V., c. 29, s. 972.

1083. Warrant when recognizance not observed.—If a court having power to deal with such offender in respect of his original offence or any justice is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, such court or justice may issue a warrant for his apprehension.

2. **On arrest, remand for judgment.**—An offender, when apprehended on any such warrant, shall, if not brought forthwith before the court having power to sentence him, be brought before the justice issuing such warrant or before some other justice in and for the same territorial division, and such justice shall either remand him by warrant until the time at which he was required by his recognizance to appear for judgment, or until the sitting of a court having power to deal with his original offence, or admit him to bail, with a sufficient surety, conditioned on his appearing for judgment.

3. **Committal.—To be brought before court.**—The offender

when so remanded may be committed to a prison, either for the county or place in or for which the justice remanding him acts, or for the county or place where he is bound to appear for judgment; and the warrant of remand shall order that he be brought before the court before which he was bound to appear for judgment, or to answer as to his conduct since his release. 55-56 V., c., 29, s. 973.

Where a convicted person, instead of being sentenced is discharged from custody upon entering into a recognizance with sureties to appear and receive judgment when called on, it is only on motion of the Crown that the recognizance can be estreated, or judgment moved against him. R. v. Young (1901), 4 C. C. C., 580.

Where after a summary trial the accused is convicted but is released on suspended sentence and a recognizance is taken binding the accused to keep the peace and be of good behaviour, the magistrate has no jurisdiction to impose sentence without an information under oath charging a breach of the recognizance. R. v. Siteman (1902), 6 C. C. C., 224.

Where such release on suspended sentence was in respect of a conviction for keeping a disorderly house, the fact that the accused had again been brought before the same magistrate on a similar charge which, however, was not substantiated, does not give the magistrate jurisdiction to impose the sentence which had been suspended in respect of the first charge. R. v. Siteman, supra.

REMITTING PENALTIES.

1084. Governor in Council may remit.—The Governor in Council may at any time remit, in whole or in part, any pecuniary penalty, fine or forfeiture imposed by any Act of the Parliament of Canada, whether such penalty, fine or forfeiture is payable to His Majesty or to some other person, or in part to His Majesty and in part to some other person, and whether it is recoverable on indictment, information or summary conviction, or by action or otherwise. 2 E. VII., c. 26, s. 1.

1085. Terms of remission.—Costs.—Such remission may, in the discretion of the Governor in Council, be on terms as to the payment of costs or otherwise: Provided that where proceedings have been instituted by private persons costs already incurred shall not be remitted. 2 E. VII., c. 26, s. 2.

PART XXI.

RENDER BY SURETIES AND RECOGNIZANCES.

INTERPRETATION.

1086. Definition.—Cognizor.—In the section of this Part relating exclusively to the province of Quebec, unless the contect otherwise requires, 'cognizor' includes any number of cognizors in the recognizance whether as principals or sureties. 55-56 V., c. 29, s. 926

DIVISION OF PART.

1087. Certain sections apply only to Quebec, and others not to Quebec.—Sections ten hundred and eighty-eight to eleven hundred and one inclusive are general in their application. Sections eleven hundred and two to eleven hundred and twelve inclusive do not apply to the province of Quebec. Sections eleven hundred and thirteen to eleven hundred and nineteen inclusive apply to the province of Quebec only. 55-56 V., c. 29, s. 926.

GENERAL.

1088. Render of accused by surety.—Any surety for any person charged with any indictable offence may, upon affidavit showing the grounds therefor, with a certified copy of the recognizance, obtain from a judge of a superior court or from a judge of a county court having criminal jurisdiction, or in the province of Quebec from a district magistrate, an order in writing under his hand, to render such person to the common gaol of the county where the offence is to be tried.

2. **Arrest by sureties.**—The sureties, under such order, may arrest such person and deliver him, with the order, to the gaoler named therein, who shall receive and imprison him in the said gaol, and shall be charged with the keeping of such person until he is discharged by due course of law. 55-56 V., c. 29, s. 910.

A judge's order under this section, authorizing the sureties to render the accused to jail, is not equivalent to a warrant of commitment to jail for trial for the purposes of the Speedy Trials Clauses. R. v. Gibson (1896) 3 C. C. C., 451.

1089. Bail after render.—Order.—The person rendered may apply to a judge of a superior court, or in cases in which a judge of a county court may admit to bail, to a judge of a county

court, to be again admitted to bail, who may on examination allow or refuse the same, and make such order as to the number of the sureties and the amount of recognizance as he deems meet.

Like conditions.—Such order shall be dealt with in the same manner as the first order for bail, and so on as often as the case requires. 55-56 V., c. 29, s. 911.

1090. Discharge of recognizance.—On due proof of such render, and certificate of the sheriff, proved by the affidavit of a subscribing witness, that such person has been so rendered, a judge of a superior or county court, as the case may be, shall order an entry of such render to be made on the recognizance by the officer in charge thereof, which shall vacate the recognizance, and may be pleaded or alleged in discharge thereof. 55-56 V., c. 29, s. 912.

1091. Render of accused in court by sureties.—The sureties may bring the person charged as aforesaid into the court at which he is bound to appear, during the sitting thereof, and then, by leave of the court, render him in discharge of such recognizance at any time before trial, and such person shall be committed to gaol, there to remain until discharged by due course of law; but such court may admit such person to bail for his appearance at any time it deems meet. 55-56 V., c. 29, s. 913.

1092. Sureties responsible for his appearance.—The arraignment or conviction of any person charged and bound as aforesaid, shall not discharge the recognizance, but the same shall be effectual for his appearance for trial or sentence, as the case may be.

2. **Committal or new sureties.**—The court may nevertheless commit such person to gaol upon his arraignment or trial, or may require new or additional sureties for his appearance for trial or sentence, as the case may be, notwithstanding such recognizance.

3. **Effect.**—Such commitment shall be a discharge of the sureties. 55-56 V., c. 29, s. 914.

Where on a trial upon an indictment a verdict of guilty was returned, but a reserved case was granted upon a question of law and the accused admitted to bail, the condition of the recognizance taken being that the accused would appear at the next sittings of the Court "to receive sentence," the condition of the recognizance is not broken if the accused fails to appear after judgment is given on the reserved case quashing the conviction and ordering a new trial. The conviction having been set aside, the accused was entitled to presume that he would not be called for sentence, and the sureties were not bound for his appearance for any other purpose than to receive sentence. R. v. Hamilton (1899), 3 C. C. C., 1.

1093. Right of surety to render not affected.—Nothing in the foregoing provisions shall limit or restrict any right which a surety now has of taking and rendering to custody any person charged with any such offence, and for whom he is such surety 55-56 V., c. 29, s. 915.

1094. Officer to prepare list of persons under recognizance making default.—If any person bound by recognizance for his appearance to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, or for whose appearance any other person has become so bound, makes default, the officer of the court by whom estreats are made out, shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person, or his surety, was so bound, together with the residence, trade, profession or calling of every such person and surety.

2. **Details in list.**—Such officer shall, in such list, distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether, by reason of the non-appearance of such person, the ends of justice have been defeated or delayed. 55-56 V., c. 29, s. 917.

1095. Proceedings on forfeited recognizance.—Every such officer shall, before any such recognizance is estreated, lay such list before the judge or one of the judges who presided at the court, or if such court was not presided over by a judge, before two justices who attended at such court, and such judge or justices shall examine such list, and make such order touching the estreating or putting in process any such recognizance as appears just, subject, in the province of Quebec, to the provisions hereinafter contained.

2. **No estreat without order.**—No officer of any such court shall estreat or put in process any such recognizance without the written order of the judge or justices before whom respectively such list has been laid. 55-56 V., c. 29, s. 918.

See Re Cohen's Bail (1896), 32 C. L. J., 412; Re Talbot's Bail (1892), 23 O. R., 65.

1096. Proceedings for enforcing recognizance on certiorari.—The like proceedings may be had for enforcing the condition of a recognizance taken under section eleven hundred and twenty-six as might be had for enforcing the condition of a recognizance taken under the Act of the Parliament of the United

Kingdom, passed in the fifth year of the reign of His Majesty King George the Second, and chaptered nineteen. 55-56 V., c. 29, s. 893.

1097. Justices to certify default.—Whenever a person gives security by or is discharged upon recognizance and does not afterwards appear at the time and place mentioned in the recognizance, or whenever the conditions or any of them in any recognizance entered into by an applicant to whom a case stated by a justice under this Act has been delivered, have not been complied with, the justice who took the recognizance, or any justice who is then present, having certified upon the back of the recognizance the non-appearance of the person or the non-compliance with the condition, as the case may be, may transmit such recognizance to the proper officer in the province appointed by law to receive the same, to be proceeded upon in like manner as other recognizances.

2. **Evidence.**—Such certificate shall be *prima facie* evidence of such non-appearance or non-compliance.

3. **Form.**—Such certificate shall be in form 73. 55-56 V., c. 29, ss. 805, 878 and 900; 58-59 V., c. 40, s. 3; 63-64 V., c. 46, s. 3.

1098. Clerk of the peace the proper officer in Ontario.—The proper officer to whom the recognizance and certificate of default are to be transmitted in the province of Ontario, shall be the clerk of the peace of the county for which such justice is acting.

2. **The court to order estreat.**—The court of general sessions of the peace for such county shall, at its then next sitting, order all such recognizances to be forfeited and estreated, and the same shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such court. 58-59 V., c. 40, s. 3; 63-64 V., c. 46, s. 3.

1099. Officer in British Columbia.—In the province of British Columbia, such proper officer shall be the clerk of the county court having jurisdiction at the place where such recognizance is taken, and such recognizance shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such county court.

2. **In the other provinces.**—In the other provinces of Canada such proper officer shall be the officer to whom like recognizances have been heretofore accustomed to be transmitted

under the law heretofore in force; and such recognizances shall be enforced and collected in the same manner as like recognizances have heretofore been enforced and collected. 58-59 V., c. 40, s. 3; 63-64 V., c. 46, s. 3.

1100. Manner of estreat.—All recognizances taken or entered into under any provision of this Act which are forfeited or in respect to which the conditions of such recognizances, or any of them, have not been complied with, shall be liable to be estreated in the same manner as any forfeited recognizance to appear is by law liable to be estreated by the court before which the principal party thereto was bound to appear. 55-56 V., c. 29, ss. 598 and 900.

1101. Proceeds paid to Finance Minister.—The sheriff or other officer shall, without delay, pay over all moneys collected under the provisions of this Part by him, to the Minister of Finance, or other authority or person entitled to receive the same. 55-56 V., c. 29, s. 925.

PROVISIONS NOT APPLICABLE TO THE PROVINCE OF QUEBEC.

1102. Entry of fines, amercements and recognizances on a roll.—Unless otherwise provided, all fines, issues, amercements and forfeited recognizances, the disposal of which is within the legislative authority of the Parliament of Canada, set, imposed, lost or forfeited before any court of criminal jurisdiction shall, within twenty-one days after the adjournment of such court be fairly entered and extracted on a roll by the clerk of the court, or in case of his death or absence, by any other person, under the direction of the judge who presided at such court, which roll shall be made in duplicate and signed by the clerk of the court, or in case of his death or absence, by such judge. 55-56 V., c. 29, s. 916.

Where a convicted person, instead of being sentenced is discharged from custody upon entering into a recognizance with sureties to appear and receive judgment when called on, it is only on motion of the Crown that the recognizance can be estreated, or judgment moved against him. R. v. Young (1901), 4 C. C. C., 580.

1103. Affidavit.—The clerk of the court shall, at the foot of each roll made out as herein directed, make and take an affidavit in the following form, that is to say:

Form.—'I, A. B. (*describing his office*), make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amercements, recognizances and forfeitures which were set, lost, imposed or forfeited, at or by the court therein mentioned, and which, in right and due course of law, ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll; and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in court or otherwise, without any wilful discharge, omission, misnomer or defect whatsoever. So help me God.'

2. **Oath.**—Any justice for the county is hereby authorized to administer such oath. 55-56 V., c. 29, s. 916.

1104. Filing of rolls in certain courts.—If such court is a superior court having criminal jurisdiction, one of such rolls shall be filed with the clerk, prothonotary, registrar or other proper officer,—

(a) in the province of Ontario, of the High Court of Justice;

(b) in the provinces of Nova Scotia, New Brunswick and British Columbia, of the Supreme Court of the province;

(c) in the province of Prince Edward Island, of the Supreme Court of Judicature of that province;

(d) in the province of Manitoba, of the Court of King's Bench of that province;

(e) in the province of Saskatchewan or Alberta, of the Supreme Court of the Northwest Territories pending the abolition of that court by the legislature of the province, and thereafter, of such court in either of the said provinces as may in respect of that province be substituted by the legislature thereof for the Supreme Court of the Northwest Territories; and,

(f) in the Yukon Territory, of the Territorial Court;

on or before the first day of the term next succeeding the court by or before which such fines or forfeitures were imposed or forfeited. 55-56 V., c. 29, s. 916; 63-64 V., c. 46, s. 3.

1105. Filing of rolls in sessions.—If such court is a court of general sessions of the peace, or a county court, one of such rolls shall remain deposited in the office of the clerk of such court.

2. **Writ of "fieri facias" and "capias" issued.**—The other of such rolls aforesaid shall, as soon as the same is prepared, be sent by the clerk of the court making the same, or in case of his death or absence, by such judge as aforesaid, with a writ of *fieri*

facias and *capias*, according to form 74, to the sheriff of the county in and for which such court was holden. 55-56 V., c. 29, s. 916.

1106. Levy under writ.—Such writ shall be authority to the sheriff for proceeding to the immediate levying and recovering of such fines, issues, amercements and forfeited recognizance, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made.

2. **Committal to gaol.**—Every person so taken shall be lodged in the common gaol of the county, until satisfaction is made or until the court into which such writ is returnable, upon cause shown by the party, as hereinafter mentioned, makes an order in the case and until such order has been fully complied with. 55-56 V., c. 29, s. 916.

1107. Sale of lands by sheriff.—If upon any writ issued under section eleven hundred and five, the sheriff takes lands or tenements in execution, he shall advertise the same in like manner as he is required to do before the sale of lands in execution in other cases; and no sale shall take place in less than twelve months from the time the writ comes to the hands of the sheriff. 55-56 V., c. 29, s. 920.

1108. Court may forbear to order estreat.—Except in the case of persons bound by recognizance for their appearance, or for whose appearance any other person has become bound to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, in every case of default whereby a recognizance becomes forfeited, if the cause of absence is made known to the court in which the person was bound to appear, the court, on consideration of such cause, and considering also, whether, by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated.

2. **Order that sum forfeited be not levied.**—With respect to all recognizances estreated, if it appears to the satisfaction of the judge who presided at such court that the absence of any person for whose appearance any recognizance was entered into, was owing to circumstances which rendered such absence justifiable, such judge may make an order directing that the sum forfeited upon such estreated recognizance shall not be levied.

3. **Minute by the judge to that effect.**—The clerk of the court shall, for such purpose, before sending to the sheriff any roll, with a writ of *fieri facias* and *capias*, as directed by section eleven hundred and five, submit the same to the judge who presided at the court, and such judge may make a minute on the said roll and writ of any such forfeited recognizances and fines as he thinks fit to direct not to be levied.

4. **Sheriff shall observe minute.**—The sheriff shall observe the direction in such minute written upon such roll and writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recogizance or fine so directed not to be levied. 55-56 V., c. 29, s. 919.

1109. Discharge from custody on giving security.—Writ of "fieri facias" and "capias" on non-appearance.—If any person on whose goods and chattels a sheriff, bailiff or other officer is authorized to levy any such forfeited recognizance, gives security to the said sheriff or other officer for his appearance at the return day mentioned in the writ, in the court into which such writ is returnable, then and there to abide the decision of such court, and also to pay such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as are adjudged and ordered by the court, such sheriff or officer shall discharge such person out of custody, and if such person does not appear in pursance of his undertaking, the court may forthwith issue a writ of *fieri facias* and *capias* against such person and the surety or sureties of the person so bound as aforesaid. 55-56 V., c. 29, s. 921.

1110. Discharge of forfeited recognizance.—The court, into which any writ of *fieri facias* and *capias* issued under the provisions of this Part is returnable, may inquire into the circumstances of the case, and may in its discretion, order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as to such court appears just; and such order shall accordingly be a discharge to the sheriff, or to the party, according to the circumstances of the case. 55-56 V., c. 29, s. 922.

An order made under Cr. Code sec. 1110 for the discharge of a forfeited recognizance is a civil and not a criminal proceeding. The discretionary order for the discharge of a forfeited recognizance authorized by this section to be made by the Court into which any writ of *fieri facias* and *capias* issued under part XXI of the Code is returnable, must be made by the Court en banc, and not by a single judge. Re McArthur's Bail (1897), 3 C. C. C., 195.

1111. Return of writ by sheriff.—The sheriff, to whom any writ is directed under this Part, shall return the same on the day on which the same is made returnable, and shall state, on the back of the roll attached to such writ, what has been done in the execution thereof; and such return shall be filed in the court into which such return is made. 55-56 V., c. 29, s. 923.

1112. Roll and return to Minister of Finance.—A copy of such roll and return, certified by the clerk of the court into which such return is made, shall be forthwith transmitted to the Minister of Finance, with a minute thereon of any of the sums therein mentioned, which have been remitted by order of the court, in whole or in part, or directed to be forborne, under the authority of section eleven hundred and eight. 55-56 V., c. 29, s. 924.

PROVISIONS APPLICABLE ONLY TO THE PROVINCE OF QUEBEC.

1113. Estreat on default.—Minute made when recognizance oral.—Whenever default is made in the condition of any recognizance lawfully entered into or taken in any criminal case proceeding or matter, in the province of Quebec, within the legislative authority of the Parliament of Canada, so that the penal sum therein mentioned becomes forfeited and due to the Crown, such recognizance shall thereupon be estreated or withdrawn from any record or proceeding in which it then is, or, where the recognizance has been entered into orally in open court, a certificate or minute of such recognizance under the seal of the court, shall be made from the records of such court. 55-56 V., c. 29, s. 926.

It is not essential to the validity of a recognizance that it should be signed by the cognizor. R. v. Corbett (1894), 7 R. J. Q., 7 S. C., 465.

1114. Transmission of recognizance, etc., to Superior Court.—Certificate evidence of forfeiture.—Such recognizance, certificate or minute, as the case may be, shall be transmitted by the court, recorder, justice, magistrate or other functionary before whom the cognizor, or the principal cognizor, where there is a surety or sureties, was bound to appear, or to do that by his default to do which the condition of the recognizance is broken, to the Superior Court in the district in which the place where such default was made is included for civil purposes, with the certificate of the court, recorder, justice, magistrate or other functionary as aforesaid, of the breach of the condition of such re-

cognizance, of which, and of the forfeiture to the Crown of the penal sum therein mentioned, such certificate shall be conclusive evidence. 55-56 V., c. 29, s. 926.

1115. Judgment to be entered.—Execution to issue.—The date of the receipt of such recognizance or minute and certificate by the prothonotary of the said court shall be endorsed thereon by him, and he shall enter judgment in favour of the Crown against the cognizor for the penal sum mentioned in such recognizance, and execution may issue therefor after the same delay as in other cases, which shall be reckoned from the time the judgment is entered by the prothonotary of the said court. 55-56 V., c. 29, s. 926.

1116. Execution on fiat.—Costs.—Such execution shall issue upon fiat or *proecipe* of the Attorney General, or of any person thereunto authorized in writing by him; and the Crown shall be entitled to the costs of execution and to costs on all proceedings in the case subsequent to execution, and to such costs, in the discretion of the court, for the entry of the judgment, as are fixed by any tariff.

2. **Imprisonment.**—The cognizor shall be liable to coercive imprisonment for the payment of the judgment and costs. 55-56 V., c. 29, s. 926; 57-58 V., c. 57, s. 1

1117. Insufficient goods or lands.—Arrest of cognizor.—When sufficient goods and chattels, lands or tenements cannot be found to satisfy the judgment against a cognizor and the same is certified in the return to the writ of execution or appears by the report of distribution, a warrant of commitment addressed to the sheriff of the district may issue upon the fiat or *proecipe* of the Attorney General, or of any person thereunto authorized in writing by him, and such warrant shall be authority to the sheriff to take into custody the body of the cognizor so in default and to lodge him in the common gaol of the district until satisfaction is made, or until the court which issued such warrant, upon cause shown as hereinafter mentioned, makes an order in the case and such order has been fully complied with.

2. **Return of warrant.**—Such warrant shall be returned by the sheriff on the day on which it is made returnable and the sheriff shall state in his return what has been done in execution thereof.

3. **Discharge of cognizor.—Order may be made.**—On petition of the cognizor, of which notice shall be given to the clerk

of the Crown of the district, the court may inquire into the circumstances of the case and may in its discretion order the discharge of the amount for which he is liable or make such order with respect thereto and to his imprisonment as may appear just, and such order shall be carried out by the sheriff. 57-58 V., c. 57, s. 1.

Where there are several cognizors the goods and lands of all of them must be proceeded against before enforcing the default by personal arrest of any of them. R. v. Ferris (1895), R. J. Q., 9 S. C., 376.

1118. Process on recognizance.—When a person has been arrested in any district for an offence committed within the limits of the province of Quebec, and a justice has taken recognizances from the witnesses heard before him or another justice, for their appearance at the next session or term of the court of competent criminal jurisdiction, before which such person is to undergo his trial there to testify and give evidence on such trial and such recognizances have been transmitted to the office of the clerk of such court, the said court may proceed on the said recognizances in the same manner as if they had been taken in the district in which such court is held. 55-56 V., c. 29, s. 926.

1119. Recovery by action.—Whenever any sum forfeited by the non-performance of the conditions of a recognizance cannot for any reason be recovered in the manner provided in the last four preceding sections, the same shall be recoverable, with costs, by action in any court having jurisdiction in civil cases to the amount, at the suit of the Attorney General of Canada or of Quebec, or other person or officer authorized to sue for the Crown; and in any such action it shall be held that the person suing for the Crown is duly empowered so to do, and that the conditions of the recognizance were not performed, and that the sum therein mentioned is, therefore, due to the Crown, unless the defendant proves the contrary.

2. **Imprisonment.**—The cognizor for the recovery of the judgment in any such action shall be liable to coercive imprisonment in the same manner as a surety is in the case of judicial suretyship in civil matters. 55-56 V., c. 29, s. 926; 57-58 V., c. 57, s. 1.

PART XXII.

EXTRAORDINARY REMEDIES.

1120. Detention of person accused on inquiry as to legality of imprisonment.—Whenever any person in custody charged with an indictable offence has taken proceedings before a judge or criminal court having jurisdiction in the premises by way of *certiorari*, *habeas corpus* or otherwise, to have the legality of his imprisonment inquired into, such judge or court may, with or without determining the question, make an order for the further detention of the person accused, and direct the judge or justice, under whose warrant he is in custody, to take any proceedings, hear such evidence, or do such further act as in the opinion of the court or judge may best further the ends of justice. 55-56 V., c. 29, s. 752.

Where sentence has been passed by a court having general jurisdiction in the case, and the prisoner is detained in custody thereunder, the authority of the Court to pass the sentence need not be set out by the jailer upon the return to a writ of habeas corpus. And even if the return does not specify such facts as show that the offence was of such a nature as to give the court in question jurisdiction to impose the punishment to which the accused person has been sentenced, the latter cannot be discharged upon habeas corpus. R. v. Burke (1898), 1 C. C. C., 539; Re Sproule, 12 S. C. R., 140; Re Ferguson (1891), 24 N. S. R., 106.

The failure to arraign a prisoner for trial at the sittings of the Court at which he should have been tried does not entitle him to a discharge on habeas corpus. R. v. Wright (1896), 2 C. C. C., 83.

Where the warrant of arrest embodied in the return to a habeas corpus, on its face shows jurisdiction in the magistrate, affidavits are not admissible to controvert such fact if the offence charged be a criminal one. R. v. Defries (1894), 1 C. C. C., 207.

A court of one province has no jurisdiction to direct an enquiry before a justice or a judge in another province and the hearing of further evidence to controvert the allegation of jurisdiction. This section is to be applied only to cases where the habeas corpus issues in the same province in which the commitment is made. R. v. Defries, supra.

Where the evidence as to the commission of the alleged offence is conflicting, and the term of imprisonment imposed by the conviction is in excess of that authorized by law, the judge before whom the case is brought on habeas corpus should not exercise the powers conferred by Cr. Code sec. 1120, of making an order for the further detention of the accused. R. v. Randolph (1900), 4 C. C. C., 165.

Where the conviction itself was lodged with the gaoler as his authority for the detention in lieu of a warrant of commitment, the judge before whom the prisoner is brought upon habeas corpus may properly order the further detention of the prisoner for a limited time until a warrant in due form can be obtained from the magistrate. R. v. Morgan (1901), 5 C. C. C., 63.

1121. Conviction affirmed on appeal, or warrant not to be held invalid when.—No conviction or order made on

summary conviction which has been affirmed, or affirmed and amended, in appeal, shall be quashed for want of form, or be removed by *certiorari* into any superior court, and no warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same. 55-56 V., c. 29, s. 886.

Although there may in fact have been a summary hearing and summary conviction thereon, if the warrant of commitment returned as the cause of detention is bad on its face in not alleging that the defendant has been convicted, a formal conviction cannot be received to remedy the defect as Code sec. 1121 applies only to cases in which the warrant alleges a conviction. R. v. Lalonde (1895), 9 C. C. C., 501.

See Keohan v. Cook (1887), 1 N. W. T. Rep., 125; Ex parte Curtis (1877), L. R., 3 Q. B. D., 13; In re Meyers and Wonnacott (1864), 23 U. C. Q. B., 611; R. v. Kennedy (1894), 10 Man. L. R., 338; Champagne v. Simard (1895), R. J. Q., 7 S. C., 40; Ex parte Kavanagh (1896), 2 C. C. C., 267.

1122. "Certiorari" not to lie when appeal is taken.—No writ of *certiorari* shall be allowed to remove any conviction or order had or made before any justice if the defendant has appealed from such conviction or order to any court to which an appeal from such conviction or order is authorized by law, or shall be allowed to remove any conviction or order made upon such appeal. 55-56 V., c. 29, s. 887.

Where a statute makes no provision for an appeal from a summary conviction, the discretion of the Court as to granting a *certiorari* should be exercised by refusing the latter unless special circumstances are shewn therefor. Ex parte Ross (1895), 1 C. C. C., 153.

But it was held in the leading English case that the right of *certiorari* was not taken away even after an appeal taken by the applicant and decision obtained thereon, although the statute authorizing an appeal to the sessions empowered the sessions to "hear and finally determine" the matttr. As was stated by Lord Kenyon, a *certiorari*, being a beneficial writ for the subject, could not be taken away without express words. R. v. Jukes (1800), 8 T. R., 542.

A provision taking away the *certiorari* does not apply where there was an absence of jurisdiction. Ex parte Bradlaugh (1878), 3 Q. B. D., 511.

But although the writ is allowed to issue, the order removed will not be quashed in such a case except upon the ground either of a manifest defect of jurisdiction or a manifest fraud in procuring it. Colonial Bank v. Willan, (1874), L. R., 5 P. C., 417.

A *certiorari* was granted in a case in which the convicting justice had no jurisdiction over the subject matter, although there was a remedy by review. Ex parte Levesque (1893), 32 N. B. R., 174.

But in another case, decided by the same court in the same year, it was held that in a case where there is a review, a *certiorari* should not be granted unless there are exceptional circumstances. Ex parte Young (1893), 32 N. B. R., 178.

Where there is a right of appeal from a summary conviction, and it appears upon an application for a certiorari to bring up the conviction to be quashed that the ground alleged therefor is more properly the subject

of an appeal, the discretion of the Court should be exercised by refusing the certiorari. R. v. Herrell (1899), 3 C. C. C., 15; R. v. Whitehead, 2 Doug., 550; R. v. The Manchester and Leeds Ry. Co., 8 A. & E., 413.

An appeal is the creature of the statute law and never lies unless given by express terms, but the rule with respect to certiorari is the very reverse; it always lies unless expressly taken away. R. v. Todd, 1 Russ. & Ches., 66.

If the notice of appeal be void for irregularity, certiorari is not taken away. R. v. Caswell (1873), 33 U. C. Q. B., 303; R. v. Becker (1891), 20 O. R., 676.

Semble that, whether or not a conviction be good on its face, the Court may on certiorari go into the facts, where the right of appeal to the General Sessions upon both law and fact has been taken away by statute. R. v. Hughes (1898), 2 C. C. C., 5.

Certiorari and not appeal is the appropriate remedy to raise the question of want of jurisdiction, ex. gr., whether proper service has been made and jurisdiction over the person acquired, or whether the justice was disqualified through interest. Re Ruggles (1902), 5 C. C. C., 163. (Supreme Court of N. S.)

A statutory provision taking away the right to a certiorari does not deprive the superior court of its power to issue the writ to quash a proceeding on the ground of want of jurisdiction. When there is a defect in the jurisdiction of justices or inferior courts, the common law right of certiorari should not be refused merely because a new trial might be had by means of an appeal; even where an appeal is pending, a certiorari for want of jurisdiction should not be refused unless the question of jurisdiction is being raised on the appeal. Re Ruggles, supra.

Except where applied for on behalf of the Crown, a certiorari is not a writ "of course," and the Court must be satisfied that there is a sufficient ground for issuing it. No more latitude is given the Court for the exercise of its discretion in granting or refusing a certiorari than in respect of other applications which are in the discretion of the Court. Re Ruggles, supra.

See also the leading case on the subject, in which all the authorities are collected and cited in the argument. R. v. Justices of Surrey, L. R., 5 Q. B., 466.

See also R. v. Starkey, 6 Man. R., 589; 7 Man. R., 47.

The taking of a writ of certiorari is a waiver on the part of the petitioner of his right of appeal. Denault v. Robida (1894), 8 C. C. C., 501.

Where an appeal was taken from a summary conviction but lapsed because of the failure of the magistrate to return the conviction, a superior court may afterwards issue a certiorari and quash the conviction notwithstanding the abortive appeal and Code sec. 1122, upon the ground that the magistrate had deprived the accused of a reasonable opportunity of making their defence and had acted collusively with the prosecutor. Ex parte Cowan (1904), 9 C. C. C., 454 (Supreme Court of N. B.)

In exceptional cases the Court will grant a certiorari, although another mode of reviewing the conviction is provided by statute, and this jurisdiction will be exercised where a gross perversion of justice has occurred through the misconduct of the magistrate. Ex parte Cowan, supra.

A certiorari may be granted to remove a summary conviction for want of jurisdiction over the offence, although an appeal from the conviction had been taken, if such appeal was quashed for irregularity due to the default of the magistrate in returning the deposit. R. v. Alford (1902), 10 C. C. C., 61.

1123. Conviction, etc., or warrant under Juvenile

Offenders Part.—No conviction under Part XVII. shall be quashed for want of form or be removed by *certiorari* or otherwise into any court of record; and no warrant of commitment under the said Part shall be held void by reason of any defect therein, if it is therein alleged that the person has been convicted and there is a good and valid conviction to sustain the same. 55-56 V., c. 29, s. 820.

1124. Conviction, etc., or warrant in other cases.—Rectifying error.—No conviction or order made by any justice, and no warrant for enforcing the same, shall, on being removed by *certiorari*, be held invalid for any irregularity, informality or insufficiency therein, if the court or judge before which or whom the question is raised, upon perusal of the depositions, is satisfied that an offence of the nature described in the conviction, order or warrant, has been committed, over which such justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence: Provided that the court or judge, where so satisfied, shall, even if the punishment imposed or the order made is in excess of that which might lawfully have been imposed or made, have the like powers in all respects to deal with the case as seems just as are by section seven hundred and fifty-four conferred upon the court to which an appeal is taken under the provisions of section seven hundred and forty-nine.

2. **Sufficiency of statement.**—Any statement which, under this Act or otherwise, would be sufficient if contained in a conviction, shall also be sufficient if contained in an information, summons, order or warrant. 55-56 V., c. 29, s. 889.

Where it does not appear upon the face of the conviction that the offence was committed within the territorial jurisdiction of the convicting justices, but it is clear upon the depositions that such was the fact, the defect will be cured by this section. R. v. Perrin (1888), 16 O. R., 446.

The powers of amendment conferrred by this section in respect of convictions removed by certiorari do not apply where there is an inherent defect in procedure which has deprived the accused of a fair trial, ex. gr., a view of the *locus in quo* taken by the magistrate in the absence of the parties. Re Sing Kee (1901), 5 C. C. C., 86.

An omission to state scienter of the accused will not invalidate a conviction if the Court upon perusal of the depositions is satisfied that an offence of the nature described in the conviction has been committed. R. v. Crandall (1896), 27 O. R., 63.

When a record is before the Superior Court by virtue of a certiorari, the Court may, under the Code, enter into the merits of the evidence, for the purpose of deciding regarding the justice of the conviction, when it concerns the application of Federal laws and the procedure relating thereto. Meunier v. Loupret, (1899), 2 Q. P. R., 126.

A conviction which states that the fine imposed shall be applied ac-

cording to law is not insufficient and illegal, upon the ground that it does not mention to whom the penalty is to be paid. Meunier v. Loupret, supra.

To authorize the amendment of a conviction under this section, the Court or judge must from the depositions be satisfied that, if trying the defendant in the first instance, the Court or judge would have convicted upon that evidence. R. v. Herrell (1898), 1 C. C. C., 510.

A summary conviction which illegally imposes imprisonment *with hard labor* in default of payment of the fine, may be amended at any time before it is acted upon, by the return of an amended conviction omitting the words "with hard labor," but in other respects conforming to the adjudication. Such an amended conviction may be returned in answer to certiorari process, although the first conviction has been transmitted by the magistrate, pursuant to a statutory requirement, to the Court to which an appeal might be taken therefrom. R. v. McAnn (1896), 3 C. C. C., 110.

Where the only record of conviction produced before the institution of certiorari proceedings to quash the same is bad, and a valid amended conviction is produced in such proceedings, the costs of opposing the motion to quash should not be awarded against the applicant. R. v. McAnn, supra; R. v. Whiffin (1900), 4 C. C. C., 141.

Under this section, the Court may adjudicate *de novo* on the evidence given before the magistrate in cases removed by certiorari; but the Court should not amend a conviction if in doing so it has to exercise the discretion of the magistrate. R. v. Whiffin, supra; Ex parte Nugent (1895), 1 C. C. C., 126.

Semble, the "depositions," upon perusal of which the Court may be satisfied that an offence has been committed over which the justice has jurisdiction, and may, under this section, decline to quash a conviction for insufficiency, etc., will include the caption to the depositions; and if such caption states that the "charge" was read over to the accused, the court may refer to the statement of the charge contained in the "warrant to apprehend," in order to ascertain whether or not the evidence taken related to an alleged offence committed within the district for which the magistrate acted. R. v. McGregor (1895), 2 C. C. C., 410.

If on the return to a certiorari the Court is satisfied upon a perusal of the depositions that an offence of the nature described in the summary conviction has been committed, the Court may hear and determine the charge upon the merits as disclosed by the depositions, and may vary, confirm, reverse, or modify the decision of the justice. R. v. Murdock (1900), 4 C. C. C., 82.

Where the original conviction directed payment of a fine and the levy of same by distress and in default of sufficient distress adjudged imprisonment, the Court exercising the power of amendment conferred by Code secs. 754 and 1124 may substitute in lieu of the distress, etc., an award of imprisonment forthwith in case of non-payment of the fine. R. v. Murdock, supra.

The Court has power to so amend a summary conviction returned on certiorari whether the certiorari is one preliminary to a motion to quash the conviction or is in aid of a writ of habeas corpus. R. v. Murdock, supra.

In default of a rule of practice to that effect, a person asking for a writ of certiorari cannot be required to give security for costs. Desjardins v. Laguerrier (1899), 2 Q. P. R., 192.

The practice is not to give costs on quashing a conviction. But costs are recoverable by action where no order of protection is made. R. v. Somers (1893), 24 O. R., 244.

The omission of the word "knowingly" from both the information and the conviction is a matter of substance, and not a mere matter of form, and the defect is not curable upon certiorari as an "irregularity, inform-

ality or insufficiency" under this section. R. v. Hayes (1903), 6 C. C. C., 357.

Where a perusal of the depositions returned on certiorari satisfies the Court that an offence was committed as stated in the conviction and of the date and place of same, which had not been stated in the conviction, the irregularity in not stating such date and place is cured by this section unless an excessive punishment has been imposed by the magistrate. R. v. Lewis (1903), 6 C. C. C., 499.

Where upon the return to a writ of certiorari the Court, upon perusal of the depositions, has no doubt as to the commission of the offence for which the defendant has been tried and convicted, but the conviction is defective in awarding a longer term of imprisonment than the statute permits, the Court has power to amend the conviction by reducing the term to the statutory limit. R. v. McKenzie (1907), 12 C. C. C., 435.

The merits of the defence as disclosed by the depositions may be enquired into upon the motion to amend, but the reference in this section dealing with certiorari matters to the procedure on appeals from summary convictions does not imply that there shall be a trial *de novo* for the purpose of fixing an appropriate punishment. R. v. McKenzie, supra.

1125. Irregularities within last section.—The following matters amongst others shall be held to be within the provisions of the last preceding section:—

(a) The statement of the adjudication, or of any other matter or thing, in the past tense instead of in the present;

(b) The punishment imposed being less than the punishment by law assigned to the offence stated in the conviction or order, or to the offence which appears by the depositions to have been committed;

(c) The omission to negative circumstances, the existence of which would make the act complained of lawful, whether such circumstances are stated by way of exception or otherwise in the section under which the offence is laid, or are stated in another section.

2. **But generality not restricted.**—Nothing in this section contained shall be construed to restrict the generality of the wording of the last preceding section. 55-56 V., c. 29, s. 890.

1126. General order for security by recognizance.—Or deposit.—The court having authority to quash any conviction, order or other proceeding by or before a justice may prescribe by general order that no motion to quash any conviction, order or other proceeding by or before a justice, brought before such court by *certiorari*, shall be entertained unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties, before a justice or justices of the county or place within which such conviction or order has been made, or before a judge or other officer, as may be prescribed by such general order, or to have made a deposit to be prescribed in like

manner, with a condition to prosecute such writ of *certiorari* at his own costs and charges, with effect, without any wilful or affected delay, and if ordered so to do, to pay the person in whose favour the conviction, order or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the court where such convicion, order or proceeding is affirmed. 55-56 V., c. 29, s. 892.

When there is no affidavit of justification, or other evidence of the sufficiency of the sureties, as required by the rules of Court passed under this section, a rule *nisi* will be discharged. R. v. Richardson & Addison (1889), 17 O. R., 729.

But when the ends of justice demand it, the Court will allow the applicant to take a new rule in the terms of the one discharged. R. v. Petrie (1889), 1 Terr. L. R., 191.

In Ontario a surety upon a recognizance filed on a motion to quash a summary conviction, must justify in the sum of $100 over and above any amount for which he may be surety as well as over and above his debts. R. v. Robinet (1894), 2 C. C. C., 382.

A rule of Court passed before the enactment of the Code under the section of the Summary Convictions Act (Can.) now incorporated in the Criminal Code as sec. 1126 as to recognizances on motions to quash convictions, remains in force as a rule under the Code without being repassed. R. v. Robinet, supra.

An affidavit of justification upon a recognizance given pursuant to rule of Court passed under sec. 1126 of the Code, need not state that the surety is worth the amount of the penalty over and above other sums for which he is surety. R. v. Ashcroft (1899), 2 C. C. C., 385.

A rule made under this section requiring sufficient sureties for a specific amount is complied with if the sureties justify as being possessed of property of that value and swear that they are worth the amount over and above all their just debts and liabilities, and over and above all exemptions allowed by law. (R. v. Robinet, supra, not followed); R. v. Ashcroft, supra.

This section authorizes the requiring of a recognizance only where the conviction is brought before the Court by a writ of certiorari, and no recognizance is required where such a writ is not necessary or is dispensed with. R. v. Ashcroft, supra.

1127. No procedendo necessary on discharge of motion to quash.—If a motion or rule to quash a conviction, order or other proceeding is refused or discharged, it shall not be necessary to issue a writ of *procedendo*, but the order of the court refusing or discharging the application shall be a sufficient authority for the registrar or other officer of the court forthwith to return the conviction, order or proceeding to the court or justice from which or whom they were removed, and for proceedings to be taken thereon for the enforcement therof, as if a *procedendo* had issued, which shall forthwith be done. 55-56 V., c. 29, s. 895.

Where the court granting the certiorari to remove the record from an inferior Court has the power to execute the judgment of the inferior Court,

the record will not be remanded to the inferior Court. R. v. Neville, 2 B. & Ad., 299.

But where the Superior Court cannot enforce the execution of the judgment or cannot administer the same justice to the parties as the Court below, or where it appears that there was no good cause for removing it the practice formerly was that the Court ordered a writ of procedends to issue to send the case back to the inferior Court. R. v. Zickrick (1897), 11 Man. R., 452; R. v. Rushworth, 9 Jur.. 161.

This section dispenses with the necessity of that writ when the conviction is affirmed, but not otherwise. R. v. Zickrick, supra.

1128. Conviction etc., not set aside for want of proof of order in council.—No order, conviction or other proceeding made by any justice or stipendiary magistrate shall be quashed or set aside, and no defendant shall be discharged, by reason of any objection that evidence has not been given of a proclamation or order of the Governor in Council, or of any rules, regulations, or by-laws made by the Governor in Council in pursuance of a statute of Canada, or of the publication of such proclamation, order, rules, regulations or by-laws in the *Canada Gazette*.

2. **Judicial notice.**—Such proclamation, order, rules, regulations and by-laws and the publication thereof shall be judicially noticed. 55-56 V., c. 29, s. 894.

1129. Conviction not to be set aside for defect in form.—Whenever it appears by any conviction made by a justice or stipendiary magistrate that the defendant has appeared and pleaded, and the merits have been tried, and the defendant has not appealed against the conviction, where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case. 55-56 V., c. 29, s. 896.

In matters of summary conviction falling under the Criminal Code the depositions must be taken in writing; otherwise the conviction will be quashed. The irregularity is not a mere defect of form and is not cured by Code sec. 1129. Re Lacroix (1907), 12 C. C. C., 297.

1130. Proceedings under Summary Trials Part not quashed for want of form or held void.—No conviction, sentence or proceeding under Part XVI. shall be quashed for want of form; and no warrant of commitment upon a conviction under the said Part shall be held void by reason of any defect therein, if it is therein alleged that the offender has been convicted and there is a good and valid conviction to sustain the same. 55-56 V., c. 29, s. 800.

This section does not validate a defective commitment, if it recites a conviction which is on its face invalid. R. v. Gibson (1898), 2 C. C. C., 302.

A summary conviction by a magistrate in respect of a charge in which he has jurisdiction only upon the consent of the accused to a summary trial, is not invalid merely because it omits to state that the accused so consented if in fact the consent was given. The omission to state the consent in the conviction is a "want of form" which is cured by Code section 1130 which provides that a conviction under Part XVI shall not be quashed for want of form. R. v. Burtress (1900), 3 C. C. C., 536.

See also R. v. Crowell (1897), 1 C. C. C., 34.

Where a conviction by a police magistrate on a "summary trial" of the accused under Part XVI of the Code imposes a longer term of imprisonment than is authorized by law, the warrant of commitment cannot be amended as in such case there is not "a valid conviction to sustain the same." R. v. Randolph (1900), 4 C. C. C., 165.

1131. No action against official when conviction quashed.—If an application is made to quash a conviction, order or other proceeding made or had by or before a justice or stipendiary magistrate, on the ground that such justice or stipendiary has exceeded his jurisdiction, the court or judge to which or whom the application is made, may, as a condition of quashing the conviction, order or other proceeding, if the court or judge thinks fit so to do, provide that no action shall be brought against the justice or stipendiary by or before whom such conviction, order or other proceeding was made or had, or against any officer acting thereunder or under any warrant issued to enforce any such conviction or order. 55-56 V., c. 29, s. 891.

A motion to quash a conviction being unopposed, no costs were allowed and terms were imposed that no action should be brought by defendant. R. v. McLeod (1897), 1 C. C. C., 10.

The condition imposed as a term of quashing a justice's order under Code sec. 1131, is one which the applicant may accept or reject on the delivery of judgment, and, if it be rejected, the court may dismiss the application with costs although it finds that the justice exceeded his jurisdiction R. v. Morning Star (1906), 11 C. C. C., 15.

1132. Proceedings relating to Part III. not void for defect of form.—No action or other proceeding, warrant, judgment, order or other instrument or writing, authorized by any provisions of Part XII. relating to Part III. or necessary to carry out its provisions, shall be held void or be allowed to fail for defect of form. R.S., c. 151, s. 23.

PART XXIII.

RETURNS.

1133. Returns concerning convictions and moneys received.—Every justice shall, quarterly, on or before the second Tuesday in each of the months of March, June, September and December in each year, make to the clerk of the peace or other proper officer of the court having jurisdiction in appeal, as herein provided, a return in writing, under his hand, of all convictions made by him, and of the receipt and application by him of the moneys received from the defendants.

2. **Extent of return.**—Such return shall include all convictions and other matters not included in some previous return, and shall be in form 75.

3. **Joint return.**—If two or more justices are present, and join in the conviction, they shall make a joint return.

4. **Supplementary return.**—Every justice, to whom any such moneys are afterwards paid, shall make a return of the receipt and application thereof, to the court having jurisdiction in appeal as hereinbefore provided, which shall be filed by the clerk of the peace or the proper officer of such court with the records of his office.

5. **Time in Prince Edward Island for return.**—In the province of Prince Edward Island such return shall be made to the clerk of the court of assize of the county in which the convictions are made, and on or before the fourteenth day next before the sitting of the said court next after such convictions are so made.

6. **Return in Nipissing.**—Every such return shall be made in the district of Nipissing, in the province of Ontario, to the clerk of the peace for the county of Renfrew, in the said province. 55-56 V., c. 29, s. 902.

A justice of the peace, whose decision is attacked under a writ of certiorari, is an officer subject to coercive imprisonment, in the Province of Quebec, for failure to deposit in Court, when ordered, all moneys received by him under the conviction. Mercier v. Plamondon (1902), 6 C. C. C., 223.

1134. Neglect or false return or taking unlawful fees.—Penalty.—Every justice, before whom any conviction takes place, or who receives any such moneys, who neglects or refuses to make such return thereof, or wilfully makes a false, partial or incorrect return, or wilfully receives a larger amount of fees than by law he is authorized to receive, and every justice who upon or in connection with, or under colour or pretense of, any information,

complaint or judicial proceeding or inquiry had or taken before him, wilfully exacts, receives, appropriates or retains any fees, moneys or payments which he is not by law authorized to receive or to be paid, shall incur a penalty of eighty dollars, together with costs of suit, in the discretion of the court, which may be recovered by any person who sues for the same by action of debt or information in any court of record in the province in which such return ought to have been or is made.

2. **Disposition of penalty.**—One moiety of such penalty shall belong to the person suing, and the other moiety to His Majesty for the public uses of Canada.

3. **Saving.**—Nothing in this section shall have the effect of preventing any person aggrieved from prosecuting, by indictment, any justice, for any offence, the commission of which would have subjected him to indictment immediately before the first day of July, one thousand eight hundred and ninety-three. 55-56 V., c. 29, ss. 902 and 905; 4 E. VII., c. 9, s. 1.

The provision of Cr. Code sec. 1134 which imposes a penalty on a justice of the peace if he wilfully receives "a larger amount of fees than by law he is authorized to receive," applies only to fees received under the summary convictions part of the Code. A "wilful" receiving of unauthorized fees means receiving them intentionally with a knowledge that there is no legal right to collect them. McGillivray v. Muir (1903), 7 C. C. C., 360.

A justice of the peace is not entitled to fees in respect of a preliminary enquiry for an indictable offence, and an action lies against him to recover fees illegally collected.

Semble, a justice who wilfully receives fees to which he is not entitled is liable to indictment for extortion. McGillivray v. Muir, supra.

See R. v. Tisdale (1860), 20 U. C. R., 272; Bowman v. Blyth, 7 E. & B., 26.

1135. Return by justice of certificates under Part III.—When any certificate is granted under section one hundred and eighteen of this Act, the justice granting it shall forthwith make a return thereof to the proper officer in the county, district or place in which such certificate has been granted for receiving returns under this Part.

2. **Penalty for default.**—On default of making such return within ninety days after a certificate is granted, the justice shall be liable, on summary conviction, to a penalty of not more than ten dollars. 55-56 V., c. 29, s. 105.

1136. Monthly returns under Part III.—Every commissioner under Part III. of this Act shall make a monthly return to the Secretary of State of all weapons delivered to him, and by him detained under Part III. R.S., c. 151, s. 12.

1137. Posting up returns.—The clerk of the peace of the district or county to whom returns under this Part are made, or the proper officer, other than the clerk of the peace, to whom such returns are made, shall, within seven days after the adjournment of the then next ensuing general or quarter sessions, or of the term or sitting of such other court having jurisdiction in appeal as aforesaid, cause the said returns to be posted up in the court-house of the district or county, and also in a conspicuous place in the office of such clerk of the peace, or other proper officer, for public inspection, and the same shall continue to be so posted up and exhibited until the end of the next ensuing general or quarter sessions of the peace, or for the term or sitting of such other court as aforesaid.

2. **Fee.**—For every schedule so made and exhibited by such clerk or officer, he shall be allowed such fee as is fixed by competent authority.

3. **Copy of returns to Finance Minister.**—Such clerk of the peace or other officer of each district or county, within twenty days after the end of each general or quarter sessions of the peace, or the sitting of such court as aforesaid, shall transmit to the Minister of Finance a true copy of all such returns made within his district or county. 55-56 V., c. 29, s. 903.

1138. Mistake not to vitiate return.—No return purporting to be made by any justice under this Act shall be vitiated by the fact of its including, by mistake, any convictions or orders had or made before him in any matter over which any provincial legislature has exclusive jurisdiction, or with respect to which he acted under the authority of any provincial law. 55-56 V., c. 29, s. 906.

1139. Returns under Part XVII.—Every clerk of the peace or other proper officer shall transmit to the Minister of Agriculture a quarterly return of the names of offenders, the offences and punishments mentioned in convictions transmitted to him under Part XVII. of this Act. 55-56 V., c. 29, s. 823.

PART XXIV.

LIMITATION OF ACTIONS.

PROSECUTIONS FOR CRIMES.

1140. Time for commencement.—No prosecution for an offence against this Act, or action for penalties or forfeiture, shall be commenced,—

(a) **Three years.**—After the expiration of three years from the time of its commission if such offence be

(i) treason, except treason by killing His Majesty, or where the overt act alleged is an attempt to injure the person of His Majesty—section seventy-four,

(ii) treasonable offences—section seventy-eight,

(iii) any offence against Part VII. relating to the fraudulent marking of merchandise; or,

(b) **Two years.**—After the expiration of two years from its commission if such offence be

(i) a fraud upon the government—section one hundred and fifty-eight,

(ii) a corrupt practice in municipal affairs—section one hundred and sixty-one,

(iii) unlawfully solemnizing marriage—section three hundred and eleven; or,

(c) **One year.**—After the expiration of one year from its commission if such offence be

(i) opposing reading of Riot Act and continuing together after proclamation—section ninety-two,

(ii) refusing to deliver weapon to justice—section one hundred and twenty-six,

(iii) coming armed near public meeting—section one hundred and twenty-seven,

(iv) lying in wait near public meeting—section one hundred and twenty-eight,

(v) seduction of girl under sixteen—section two hundred and eleven,

(vi) seduction under promise of marriage—section two hundred and twelve,

(vii) seduction of a ward or employee—section two hundred and thirteen,

(viii) parent or guardian procuring defilement of girl—section two hundred and fifteen,

(ix) unlawfully defiling women, procuring, etc.—section two hundred and sixteen,

(x) householders permitting defilement of girls on their premises—section two hundred and seventeen; or,

(d) **Six months.**—After the expiration of six months from its commission if the offence be

(i) unlawful drilling—section ninety-eight,

(ii) being unlawfully drilled—section ninety-nine,

(iii) having possession of offensive weapons for purposes dangerous to the public peace—section one hundred and fifteen,

(iv) proprietor of newspaper publishing advertisement offering reward for recovery of stolen property—section one hundred and eighty-three, paragraph (d); or,

(e) **Three months.**—After the expiration of three months from its commission if the offence be

(i) cruelty to animals—sections five hundred and forty-two and five hundred and forty-three,

(ii) railways and vessels violating provisions relating to conveyance of cattle—section five hundred and forty-four,

(iii) refusing peace officer or constable admission—section five hundred and forty-five; or,

(f) **One month.**—After the expiration of one month from its commission if the offence be improper use of offensive weapons under sections one hundred and sixteen and one hundred and eighteen to one hundred and twenty-four inclusive.

2. **Six days.**—No person shall be prosecuted, under the provisions of section seventy-four or seventy-eight of this Act, for any overt act of treason expressed or declared by open and advised speaking unless information of such overt act, and of the words by which the same was expressed or declared, is given upon oath to a justice within six days after the words are spoken and a warrant for the apprehension of the offender is issued within ten days after such information is given. 55-56 V., c. 29, s. 551.

The common law rule is that the Crown is not prescribed from prosecuting proceedings by any length of time, and that rule applies in all cases in which the time for bringing the prosecution is not specially limited by the Code.

By virtue of section 905, a defence founded on the limitations of time specified in this section need not be specially pleaded.

As to what is the commencement of a prosecution, see R. v. Austin (1845), 1 C. & K., 621; R. v. Brooks (1847), 2 C. & K., 402; R. v. Casbolt (1869), 11 Cox C. C., 385; R. v. Parker (1864), 33 L. J. M. C., 135; R. v. Phillips (1818), R. & R., 369; Ex parte Wallace (1897), 33 C. L. J., 506.

1141. Penalty or forfeiture by action within two years.—No action, suit or information shall be brought or laid for any penalty or forfeiture under any Act, except within two years after the cause of action arises or after the offence for which such

penalty or forfeiture is imposed is committed, unless the time is otherwise limited by any Act or by law. 55-56 V., c. 29, s. 930.

See R. v. Elliott (1905), 9 C. C. C., 505.

1142. Summary conviction six months.—Twelve months.—In the case of any offence punishable on summary conviction, if no time is specially limited for making any complaint, or laying any information, in the Act or law relating to the particular case, the complaint shall be made, or the information laid, within six months from the time when the matter of the complaint or information arose, except in the Northwest Territories and the Yukon Territory, in all which Territories the time within which such complaint may be made, or such information laid, shall be twelve months from the time when the matter of the complaint or information arose. 55-56 V., c. 29, s. 841; R.S., c. 50, s. 81; 61 V., c. 6, s. 9.

This section applies only to proceedings under the summary conviction clauses of the Criminal Code.

An information may be laid and proceedings taken thereon for the prosecution by indictment of an indictable offence, although the case is one which might have been summarily tried by a justice had the information been laid within the six months' limit provided by this section, and although that period had expired before the laying of the information. R. v. Edwards (1898), 2 C. C. C., 96.

An indictment for rape includes the lesser charge of assault, and a verdict thereon of guilty of common assault is properly followed by a conviction, although the information was laid more than six months after the offence was committed. R. v. Edwards, supra.

See also R. v. Lee How (1901 4 C. C. C., 551; R. v. West (1898), 1 Q. B. D., 174.

ACTIONS AGAINST PERSONS ADMINISTERING THE CRIMINAL LAW.

1143. Time and place of action.—Every action and prosecution against any person for anything purporting to be done in pursuance of any Act of the Parliament of Canada relating to criminal law, shall, unless otherwise provided, be laid and tried in the district, county or other judicial division, where the act was committed, and not elsewhere, and shall not be commenced except within six months next after the act committed. 55-56 V., c. 29, s. 975.

1144. Notice in writing.—Notice in writing of such action and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action. 55-56 V., c. 29, s. 976.

See Re Lake (1877), 42 U. C. Q. B., 206; R. v. McAllan (1880), 45 U. C. Q. B., 402; R. v. Fitzgerald (1898), 1 C. C. C., 420.

1145. General issue.—In any such action the defendant may plead the general issue, and give the provisions of this title and the special matter in evidence at any trial had thereupon. 55-56 V., c. 29, s. 977.

1146. Tender or payment into court.—No plaintiff shall recover in any such action if tender of sufficient amends is made before such action brought, or if a sufficient sum of money is paid into court by or on behalf of the defendant after such action brought. 55-56 V., c. 29, s. 978.

1147. Judgment if action not brought in time, etc. Costs.—If such action is commenced after the time limited as aforesaid for bringing the same, or is brought or the venue laid in any other place than as aforesaid, a verdict shall be found or judgment shall be given for the defendant; and thereupon, or if the plaintiff becomes nonsuit, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his full costs as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases.

2. **No costs unless action approved.**—Although a verdict or judgment is given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial is had certifies his approval of the action. 55-56 V., c. 29, s. 979.

1148. Other protecting Acts remain.—Nothing herein shall prevent the effect of any Act in force in any province of Canada, for the protection of justices or other officers from vexatious actions for things purporting to be done in the performance of their duty. 55-56 V., c. 29, s. 980.

See Ferguson v. Adams (1848), 5 U. C. Q. B., 194; Gates v. Devenish (1849), 6 U. C. Q. B., 260; Eastman v. Reid (1850), 6 U. C. Q. B., 611.

1149. Actions under Part III., six months.—Venue.—Every action brought against any commissioner under Part III. of this Act or any justice, constable, peace officer or other person, for anything done in pursuance of the said Part, shall be commenced within six months next after the alleged cause of action

arises; and the venue shall be laid or the action instituted in the district or county or place where the cause of action arose; and the defendant may plead the general issue and give this Act and the special matter in evidence.

2. **Judgment if action not brought in time, etc.—Double costs.**—If such action is brought after the time limited, or the venue is laid or the action brought in any other district, county or place than in this action prescribed, the judgment or verdict shall be given for the defendant; and in such case, or if the judgment or verdict is given for the defendant on the merits, or if the plaintiff becomes non-suited or discontinues after appearance is entered, or has judgment rendered against him on demurrer, the defendant shall be entitled to recover double costs. R. S., c. 151, s. 24.

1150. Actions for penalties under section 1134 within six months.—Costs.—All actions for penalties arising under the provisions of section eleven hundred and thirty-four shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the district, county or place wherein such penalties have been incurred; and if a verdict or judgment passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his costs of suit, as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases. 55-56 V., c. 29, s. 904.

1151. Enforcing conviction under section 765, no action.—No action or proceeding shall be commenced or had against a justice for enforcing a conviction, order or determination affirmed, amended or made by the court under section seven hundred and sixty-five. 55-56 V., c. 29, s. 900.

PART. XXV.

Forms.

1152. As in this Part may be varied as to officials.—The several forms in this Part, varied to suit the case, or forms to the like effect, shall be deemed good, valid and sufficient in the cases thereby respectively provided for; and may, when made for one class of officials, be varied so as to apply to any other class having the same jurisdiction. 55-56 V., c. 29, ss. 541 and 982.

FORM 1.

(Section 629.)

INFORMATION TO OBTAIN A SEARCH WARRANT.

Canada,
Province of
County of }

The information of A. B., of in the said county (*yeoman*), taken this day of in the year before me, J. S., Esquire, a justice of the peace, in and for the district (*or* county, *etc.*,) of , who says that (*describe things to be searched for and offence in respect of which search is made*), and that he has just and reasonable cause to suspect, and suspects, that the said goods and chattels, or some part of them are concealed in the (*dwelling-house, etc.*,) of C. D., of in the said district (*or* county, *etc.*,) (*here add the causes of suspicion, whatever they may be*): Wherefore (*he*) prays that a search warrant may be granted to him to search the (*dwelling-house, etc.*), of the said C. D., as aforesaid, for the said goods and chattels so stolen, taken and carried away as aforesaid (*or as the case may be*).

Sworn (*or* affirmed) before me the day and year first above mentioned, at in the said county of

J. S.,
J. P. (*name of district or county, etc.*)

63-64 V., c. 46, form J.

FORM 2.

(Section 630.)

WARRANT TO SEARCH.

Canada,
Province of
County of }

To all or any of the constables and other peace officers in the said county of

Whereas it appears on the oath of A. B., of , that there is reason to suspect that (*describe things to be searched for and offence in respect of which search is made*) are concealed in at

This is, therefore, to authorize and require you to enter between the hours of (*as the justice shall direct*) into the said premises, and to search for the said things, and to bring the same before me or some other justice.

Dated at , in the said county of this day of , in the year .

J. S.,
J. P. (*name of county.*)

To of .

55-56 V., c. 29, sch. 1, form I.

FORM 3.

(Section 654.)

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Canada,
Province of ,
County of ,

The information and complaint of C. D. of , (*yeoman*), taken this day of , in the year ,before the undersigned (*one*) of His Majesty's justices of the peace in and for the said county of , who saith that (*etc., stating the offence*).

Sworn before (*me*), the day and year first above mentioned, at

J. S.,
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form C.

FORM 4.

(Section 656.)

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE COMMITTED ON THE HIGH SEAS OR ABROAD.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have

been committed, on the high seas, out of the body of any district or county of Canada and within the jurisdiction of the Admiralty of England.'

For offences committed abroad for which the parties may be indicted in Canada the warrant also may be the same as in ordinary cases, but describing the offence to have been committed, on land out of Canada, to wit: at in the Kingdom of , *or*, at , in the Island of , in the West Indies, *or* at , in the East Indies,' *or as the case may be.*

55-56 V., c. 29, sch. 1, form D.

FORM 5.

(Section 658.)

SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of
County of : {

To A. B., of , (*labourer*):

Whereas you have this day been charged before the undersigned , a justice of the peace in and for the said county of , for that you on , at , (*stating shortly the offence*): These are therefore to command you, in His Majesty's name, to be and appear before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county of , as shall then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form E.

FORM 6.

(Section 659.)

WARRANT IN THE FIRST INSTANCE TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of
County of } :

To all or any of the constables and other peace officers in the said county of .

Whereas A. B., of (*labourer*), has this day been charged upon oath before undersigned , a justice of the peace in and for the said county of , for that he, on , at did (*etc., stating shortly the offence*): These are, therefore, to command you, in His Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other justice of the peace in and for the said county of , to answer unto the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (name of county.)

55-56 V., c. 29, sch. 1, form F.

FORM 7.

(Section 660.)

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of
County of } :

To all or any of the constables and other peace officers in the said county of .

Whereas on the day of , (instant *or* last past) A. B., of , was charged before (*me or us,*) the undersigned (*or name of the justice or justices, or as*

the case may be), (*a*) justice of the peace in and for the said county of , for that (*etc., as in the summons*); and whereas I (*or* he *the said justice of the peace, or* we *or* they *the said justice of the peace*) did then issue (*my, our, his or their*) summons to the said A. B., commanding him, in His Majesty's name, to be and appear before (*me*) on at o'clock in the (fore) noon, at , or before such other justice or justices of the peace as should then be there, to answer to the said charge and to be further dealt with according to law; and whereas the said A. B., has neglected to be or appear at the time and place appointed in and by the said summons, although it has now been proved to (*me*) upon oath that the said summons was duly served upon the said A. B.: These are therefore to command you in His Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other justice of the peace in and for the said county of , to answer the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form G.

FORM 8.

(Section 662.)

ENDORSEMENT IN BACKING A WARRANT.

Canada,
Province of
County of

Whereas proof upon oath has this day been made before me , a justice of the peace in and for the said county of , that the name of J. S. to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned; I do therefore hereby authorize W. T. who brings to me this warrant and all other persons to whom this warrant was originally directed, or by whom it may be lawfully

executed, and also all peace officers of the said county of , to execute the same within the said last mentioned county.

Given under my hand and seal this day of , in the year , at , in the county aforesaid.

J. L.,
J. P., (*name of county.*)

55-56 V., c. 29, sch. 1, form H.

FORM 9.

(Section 665.)

WARRANT TO CONVEY BEFORE A JUSTICE OF ANOTHER COUNTY.

Canada,
Province of .
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas information upon oath was this day made before the undersigned that A. B., of on the day of , in the year , at , in the county of (*state the charge*).

And whereas I have taken the deposition of X. Y. as to the said offence.

And whereas the charge is of an offence committed in the county of

This is to command you to convey the said (*name of accused*), of , before some justice of the last-mentioned county, near the above place, and to deliver to him this warrant and the said deposition.

Dated at , in the said county of this day of , in the year .

J. S.,
J. P. (*name of county.*)

To of .

55-56 V., c. 29, sch. 1, form A.

FORM 10.

(Section 666.)

RECEIPT TO BE GIVEN TO THE CONSTABLE BY THE JUSTICE FOR THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of
County of

I, J. L., a justice of the peace in and for the county of , hereby certify that W. T., peace officer of the county of has, on this day of , in the year , by virtue of and in obedience to a warrant of J. S., Esquire, a justice of the peace in and for the county of ,produced before me one A. B., charged before the said J. S. with having (*etc., stating shortly the offence*) and delivered him into the custody of , by my direction to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (*s*) of C. D. (*and of*), in the said warrant mentioned, and that he has also proved to me, upon oath, the handwriting of the said J. S., subscribed to the same.

Dated the day and year first above mentioned, at , in the said county of

J. L.,
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form B.

FORM 11.

(Section 671.)

SUMMONS TO A WITNESS.

Canada,
Province of
County of

To E. F., of (*labourer*):

Whereas information has been laid before the undersigned

, a justice of the peace in and for the said county of , that A. B. (*etc., as in the summons or warrant against the accused*), and it has been made to appear to me that you are likely to give material evidence for (*the prosecution or for the accused*): These are therefore to require you to be and to appear before me, on next, at o'clock in the (fore) noon, at , or before such other justice or justices of the peace of the said county of , as shall then be there, to testify what you know concerning the said charge so made against the said A. B., as aforesaid. Herein fail not.

Given under my hand and seal this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form K; 58-59 V., c. 40, s. 1.

FORM 12.

(Section 673.)

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUMMONS.

Canada,
Province of , }
County of . }

To all or any of the constables and other peace officers in the said county of .

Whereas information having been laid before , a justice of the peace, in and for the said county of . that A. B., (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F., of (*labourer*), was likely to give material evidence for (*the prosecution*), (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at , or before such other justice or justices of the peace for the said county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B,, as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such summons having

been duly served upon the said E. F.; and whereas the said E. F., has neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (fore) noon, at ,or before such other justice or justices for the said county, as shall then be there, to testify what he knows concerning the said charges so made against the said A. B., as aforesaid.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. R. (*name of county.*)

55-56 V., c. 29, sch. 1, form L.

FORM 13.

(Sections 674 and 842.)

CONVICTION FOR CONTEMPT.

Canada,
Province of
County of

Be it remembered that on the day of , in the year , in the county of , E. F. is convicted before me, for that he the said E. F. did not attend before me to give evidence on the trial of a certain charge against one A. B. of theft (*or as the case may be*), although duly subpœnaed (*or* bound by recognizance to appear and give evidence in that behalf, *as the case may be*) but made default therein, and has not shown before me any sufficient excuse for such default, and I adjudge the said E. F., for his said offence, to be imprisoned in the common goal of the county of , at , for the space of , there to be kept with (*or* without) hard labour (*as may be authorized and determined, and in case a fine is also intended to be imposed, then proceed*) and I also adjudge that the said E. F., do forthwith pay to and for the use of His Majesty a fine of dollars, and in default of payment, that the said fine, with the cost of

collection, be levied by distress and sale of the goods and chattels of the said E. F. (*or in case a fine alone is imposed, then the clause of imprisonment is to be omitted*).

Given under my hand in the said county of , the day and year first above mentioned.

O. K.,
Judge.

55-56 V., c. 29, sch. 1, form PP.

FORM 14.

(Section 675.)

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of
County of ;

To all or any of the constables and other peace officers in the said county of

Whereas information has been laid before the undersigned , a justice of the peace, in and for the said county of , that (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath, that E. F., of , (*labourer*), is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so: These are therefore to command you to bring and have the said E. F. before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county, as shall then be there, to testify what he knows concerning the said charge so made against the said A. B., as aforesaid.

Given under my hand and seal this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form M.

FORM 15.

(Section 677.)

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUBPŒNA.

Canada,
Province of
County of

To all or any of the constables and other peace officers in the said county of .

Whereas information having been laid before , a justice of the peace, in and for the said county, that A. B. (*etc., as in the summons*); and there being reason to believe that E. F., of ,in the province of , (*labourer*), was likely to give material evidence for (*the prosecution*), a writ of subpœna was issued by order of , judge of (*name of court*), to the said E. F., requiring him to be and appear before (*me*) on at or before such other justice or justices of the peace for the same county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such writ of subpœna having been duly served upon the said E. F.; and whereas the said E. F., has neglected to appear at the time and place appointed by the said writ of subpœna, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices for the said county as shall then be there, to testify what he knows concerning the said charge so made against the said A. B., as aforesaid.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form N.

FORM 16.

(Section 678.)

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR TO GIVE

Canada,
Province of
County of ,

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol at , in the said county of ,

Whereas A. B., was lately charged before a justice of the peace in and for the said county of , for that (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F., of was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before me on , at , or before such other justice or justices of the peace for the said county as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F., now appearing before (*me*) (*or* being brought before (*me*) by virtue of a warrant in that behalf), to testify as aforesaid, and being required to make oath or affirmation as a witness in that behalf, now refuses so to do (*or* being duly sworn as a witness now refuses to answer certain questions concerning the premises which are now here put to him, and more particularly the following) without offering any just excuse for such refusal: These are therefore to command you, the said constables or peace officers, or any one of you, to take the said E. F., and him safely to convey to the common goal at , in the county aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol to receive the said E. F., into your custody in the said common gaol, and him there safely keep for the space of days, for the said contempt, unless in the meantime he consents to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient warrant.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (name of county.)

55-56 V., c. 29, sch. 1, form O.

FORM 17.

(Section 679.)

WARRANT REMANDING A PRISONER.

Canada,
Province of
County of } :

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol at , in the said county.

Whereas A. B. was this day charged before the undersigned , a justice of the peace in and for the said county of , for that (*etc., as in the warrant to apprehend*), and it appears to (*me*) to be necessary to remand the said A. B.: These are therefore to command you, the said constables and peace officers, or any of you, in His Majesty's name, forthwith to convey the said A. B., to the common gaol at , in the said county, and there to deliver him to the keeper thereof, together with this precept: And I hereby command you the said keeper to receive the said A. B. into your custody in the said common gaol, and there safely keep him until the day of (*instant*), when I hereby command you to have him at , at o'clock in the (fore) noon of the same day before (*me*) or before such other justice or justices of the peace for the said county as shall then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form P.

FORM 18.

(Section 681.)

RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN ADJOURNMENT OF EXAMINATION.

Canada,
Province of
County of } :

Be it remembered that on the day of in the year , A. B., of (*labourer*), L. M., of

(*grocer*), and N. O., of (*butcher*), personally came before me, , a justice of the peace for the said county, and severally acknowledged themselves to owe to our Sovereign Lord the King, his heirs and successors, the several sums following, that is to say: The said A. B., the sum of , and the said L. M., and N. O., the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at before me.

J. S.,
J. P. (*name of county.*)

CONDITION.

The condition of the within (*or* above written recognizance is such that whereas the within bounden A. B. was this day (*or* on last past) charged before me for that (*etc., as in the warrant*); and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of (*instant*): If therefore, the said A. B., appears before me on the said day of (*instant*), at o'clock in the (fore) noon, or before such other justice or justices of the peace for the said county as shall then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, the said recognizance to be void, otherwise to stand in full force and virtue.
55-56 V., c. 29, sch. 1, form Q.

FORM 19.

(Section 682.)

DEPOSITION OF A WITNESS.

Canada,
Province of ,
County of .

The deposition of X. Y. of , taken before the undersigned, a justice of the peace for the said county of ,

this day of , in the year , at (*or* after notice to C. D. who stands committed for) in the presence and hearing of C. D., who stands charged that (*state the charge*). The said deponent saith on his (*oath or affirmation*) as follows: (*Insert deposition as nearly as possible in words of witness.*)

(*If depositions of several witnesses are taken at the same time, they may be taken and signed as follows*):

The depositions of X. of , Y. of , Z. of , etc., taken in the presence and hearing of C. D., who stands charged that

The deponent X. (*on his oath or affirmation*) says as follows:

The deponent Y. (*on his oath or affirmation*) says as follows:

The deponent Z. (*on his oath, etc., etc.*)

(*The signature of the justice may be appended as follows*):

The depositions of X., Y., Z., etc., written on the several sheets of paper, to the last of which my signature is annexed, were taken in the presence and hearing of C. D., and signed by the said X., Y., Z., etc., respectively in his presence. In witness whereof I have in the presence of the said C. D., signed my name.

J. S.,
J. P., (name of county.)

55-56 V., c. 29, sch. 1, form S.,

FORM 20.

(Section 684.)

STATEMENT OF THE ACCUSED.

Canada,
Province of
County of

A. B., stands charged before the undersigned , a justice of the peace in and for the county aforesaid, this day of , in the year , for that the said A. B., on , at (*etc., as in the captions of the depositions*); and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F., being severally examined in his presence, the said A. B., is now addressed by me as follows:

'Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat.' Whereupon the said A. B. says as follows: (*Here state whatever the prisoner says and in his very words, as nearly as possible. Get him to sign it if he will*).

A. B.

Taken before me, at , the day and year first above mentioned.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form T.

FORM 21.

(Section 688.)

FORM OF RECOGNIZANCE WHERE THE PROSECUTOR REQUIRES THE JUSTICE TO BIND HIM OVER TO PROSECUTE AFTER THE CHARGE IS DISMISSED.

Canada,
Province of
County of } :

Whereas C. D., was charged before me upon the information of E. F. that C. D. (*state the charge*), and upon the hearing of the said charge I discharged the said C. D., and the said E. F., desires to prefer an indictment against the said C. D., respecting the said charge, and has required me to bind him over to prefer such an indictment at (*here describe the next practicable sitting of the court by which the person discharged would be tried if committed*).

The undersigned E. F., hereby binds himself to perform the

following obligation, that is to say, that he will prefer and prosecute an indictment respecting the said charge against the said C. D., at (*as above*). And the said E. F., acknowledges himself bound to forfeit to the Crown the sum of $ in case he fails to perform the said obligation.

E. F.

Taken before me.

J. S.,
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form U.

FORM 22.

(Section 690.)

WARRANT OF COMMITMENT.

Canada,
Province of
County of

To all or any of the constables and other peace officers of , and to the keeper of the (*common gaol*) at , in the said county of .

Whereas A. B., was this day charged before me, J. S., one of His Majesty's justices of the peace in and for the said county of , on the oath of C. D., of , (*farmer*), and others, for that (*etc., stating shortly the offence*): These are therefore to command you the said constable to take the said A. B., and him safely to convey to the (*common gaol*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you the said keeper of the said (*common gaol*) to receive the said A. B., into your custody in the said (*common gaol*), and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form V.

FORM 23.

(Section 692.)

RECOGNIZANCE TO PROSECUTE.

Canada,
Province of
County of

Be it remembered that on the day of , in the year , C. D. of , in the of , in the said county of , (*farmer*), personally came before me , a justice of the peace in and for the said county of , and acknowledged himself to owe to our Sovereign Lord the King, his heirs and successors, the sum of , of good and lawful current money of Canada, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Sovereign Lord the King, his heirs and successors, if the said C. D. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.,
J. P. (*name of county.*)

CONDITION TO PROSECUTE.

The condition of the within (*or* above) written recognizance is such that whereas one A. B., was this day charged before me, J. S., a justice of the peace within mentioned, for that (*etc., as in the caption of the depositions*); if, therefore, he the said C. D., appears at the court by which the said A. B., is or shall be tried * and there duly prosecutes such charge then the said recognizance to be void, otherwise to stand in full force and virtue.

55-56 V., c. 29, sch. 1, form W.

FORM 24.

(Section 692.)

RECOGNIZANCE TO PROSECUTE AND GIVE EVIDENCE.

(*Same as the last form, to the asterisk,* and then thus*):—
And there duly prosecutes such charge against the said A. B.,

for the offence aforesaid, and gives evidence thereon, as well to the jurors who shall then inquire into the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue.
55-56 V., c. 29, sch. 1, form X.

FORM 25.

(Section 692.)

RECOGNIZANCE TO GIVE EVIDENCE.

(*Same as form 23 to the asterisk,* and then thus*):--And there gives such evidence as he knows upon the charge to be then and there preferred against the said A. B., for the offence aforesaid, then the said recognizance to be void, otherwise to remain in full force and virtue.
55-56 V., c. 29, sch. 1, form Y.

FORM 26.

(Section 694.)

COMMITMENT OF A WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE.

Canada,
Province of
County of } ,

To all or any of the peace officers in the said county of , and to the keeper of the common gaol of the said county of , at , in the said county of .

Whereas A. B. was lately charged before the undersigned (*name of the justice of the peace*), a justice of the peace in and for the said county of , for that (*etc., as in the summons to the witness*), and it having been made to appear to (*me*) upon oath that E. F., of . was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*)

on , at or before such other justice or justices of the peace as should then be there, to testify what he knows concerning the said charge so made against the said A. B., as aforesaid; and the said E. F., now appearing before (*me*) (*or* being brought before (*me*) by virtue of a warrant in that behalf to testify as aforesaid), has been now examined before (*me*) touching the premises, but being by (*me*) required to enter into a recognizance conditioned to give evidence against the said E. F., and him safely convey to the common gaol at mand you the said peace officers, or any one of you, to take the said E. F., and him safely convey to the common goal at , in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said E. F., into your custody in the said common gaol, there to imprison and safely keep him until after the trial of the said A. B., for the offence aforesaid, unless in the meantime the said E. F. duly enters into such recognizance as aforesaid, in the sum of before some one justice of the peace for the said county, conditioned in the usual form to appear at the court by which the said A. B, is or shall be tried, and there to give evidence upon the charge which shall then and there be preferred against the said A. B., for the offence aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form Z.

FORM 27.

(Section 694.)

ORDER DISCHARGING WITNESS, WHEN ACCUSED DISCHARGED.

Canada,
Province of
County of ; }

To the keeper of the common gaol at , in the county of , aforesaid.

Whereas by (*my*) order dated the day of

(*instant*) reciting that A. B, was lately before then charged before (*me*) for a certain offence therein mentioned, and that E. F., having appeared before (*me*) and being examined as a witness for the prosecution on that behalf, refused to enter into recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F., to your custody, and required you safely to keep him until after the trial of the said A.B., for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid; and whereas for want of sufficient evidence against the said A. B., the said A. B., has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F., should be detained longer in your custody: These are therefore to order and direct you the said keeper to discharge the said E. F., out of your custody, as to the said commitment, and suffer him to go at large.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form AA.

FORM 28.

(Section 696.)

RECOGNIZANCE OF BAIL.

Canada,
Province of
County of

Be it remembered that on the day of , in the year , A. B., of , (*labourer*), L. M. of , (*grocer*), and N. O. of , (*butcher*), personally came before (*us*) the undersigned, (*two*) justices of the peace for the county of , and severally acknowledged themselves to owe to our Sovereign Lord the King, his heirs and successors, the several sums following, that is to say: the said A. B., the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our

said Sovereign Lord the King, his heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at , before us,

J. S.,
J. N.,
J. P. (*name of county.*)

The condition of the within (*or* above) written recognizance is such that whereas the said A. B., was this day charged before (*us*), the justices within mentioned for that (*etc., as in the warrant*); if, therefore, the said A. B., appears at the next superior court of criminal jurisdiction (*or* court of general or quarter sessions of the peace) to be holden in and for the county of , and there surrenders himself into the custody of the keeper of the common gaol (*or* lock-up house) there, and pleads to such indictment as may be found against him by the grand jury, for and in respect to the charge aforesaid, and takes his trial upon the same, and does not depart the said court without leave, then the said recognizance to be void, otherwise to stand in full force and virtue.
63-64 V., c. 46, form BB.

FORM 29.

(Section 698.)

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED.

Canada,
Province of ,
County of .

To the keeper of the common gaol of the county of , at , in the said county.

Whereas A. B., late of , (*labourer*), has before (*us*) (*two*) justices of the peace in and for the said county of , entered into his own recognizance, and found sufficient sureties for his appearance at the next superior court of criminal jurisdiction (*or* court of general or quarter sessions of the peace), to be holden in and for the county of , to

answer our Sovereign Lord the King, for that (*etc., as in the commitment*), for which he was taken and committed to your said common gaol: These are therefore to command you, in His Majesty's name, that if the said A. B., remains in your custody in the said common gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. N., [SEAL.]
J. P. (*name of county.*)

63-64 V., c. 46, form CC.

FORM 30.

(Section 704.)

GAOLER'S RECEIPT TO THE CONSTABLE FOR THE PRISONER.

I hereby certify that I have received from W. T., constable, of the county of , the body of A. B., together with a warrant under the hand and seal of J. S., Esquire, justice of the peace for the said county of , and that the said A. B., was sober (*or as the case may be*), at the time he was delivered into my custody.

P. K..
Keeper of the common gaol of the said county.

55-56 V., c. 29, sch. 1, form DD.

FORM 31.

(Section 727.)

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS AND IN DEFAULT OF SUFFICIENT DISTRESS, BY IMPRISONMENT.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , in the said county, A. B., is convicted before the undersigned, , a justice of

the peace for the said county, for that the said A. B. (*etc., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B., for his said offence to forfeit and pay the sum of $ (*stating the penalty, and also the compensation, if any*), to be paid and applied according to law, and also to pay to the said C. D., the sum of , for his costs in this behalf; and if the said several sums are not paid forthwith, (*or* on or before the of next), * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress, * I adjudge the said A. B., to be imprisoned in the common gaol of the said county, at in the said county of , (there to be kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of ,unless the said several sums and all costs and charges of the said distress and of the commitment and of the conveying of the said A. B. to the said gaol are sooner paid.

Given under my hand and seal, the day and year first above mentioned, at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county*).

**Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks * * say,* 'inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B., and his family', (*or*, 'that the said A. B., has no goods or chattels whereon to levy the said sums by distress').

55-56 V., c. 29, sch. 1, form VV.

FORM 32.

(Section 727.)

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , in the said county,

A. B., is convicted before the undersigned, , a justice of the peace for the said county, for that he the said A. B. (*etc., stating the offence and the time and place when and where it was committed*), and I adjudge the said A. B., for his said offence to forfeit and pay the sum of (*stating the penalty and the compensation, if any*) to be paid and applied according to law; and also to pay to the said C. D., the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or*, on or before next), I adjudge the said A. B., to be imprisoned in the common gaol of the said county, at , in the said county of (and there to be kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , unless the said sums and the costs and charges of the commitment and of the conveying of the said A. B., to the said common gaol are sooner paid.

Given under my hand and seal, the day and year first above mentioned, at in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form WW.

FORM 33.

(Section 727.)

CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT, ETC.

Canada,
Province of
County of

Be it remembered that on the day of , in the year , at , in the said county, A. B. is convicted before the undersigned, , a justice of the peace in and for the said county, for that he the said A. B. (*etc., stating the offence and the time and place when and where it was committed*): and I adjudge the said A. B., for his said offence to be imprisoned in the common gaol of the said county, at , in the county of , (and there to be kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of : and I also adjudge the said A. B., to pay to the said C. D., the sum of ,

for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or* on or before next) then* I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf,* I adjudge the said A. B., to be imprisoned in the said common gaol (and kept there at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , to commence at and from the expiration of the term of his imprisonment aforesaid, unless the said sum for costs and the costs and charges of the commitment and of the conveying of the said A. B., to gaol are sooner paid.

Given under my hand and seal, the day and year first above mentioned, at , in the county aforesaid.

J. S., [SEAL.]
J. P., (name of county.)

**Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress then, instead of the words between the asterisks * * say,* 'inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B., and his family' (*or*, 'that the said A. B., has no goods or chattels whereon to levy the said sum for costs by distress').

55-56 V., c. 29, sch. 1, form XX.

FORM 34.

(Section 727.)

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF DISTRESS, IMPRISONMENT.

Canada,
Province of , }
County of }

Be it remembered that on , a complaint was made before the undersigned, , a justice of the peace in and for the said county of for that (*stating the facts*

entitling the complainant to the order, with the time and place when and where they occurred), and now at this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D., appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B., was duly served with the summons in this behalf, which required him to be and appear here on this day before me or such justice or justices of the peace for the county, as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B., to pay to the said C. D., the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D., the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then* I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf * I adjudge the said A. B., to be imprisoned in the common gaol of the said county, at , in the said county of , (and there kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , unless the said several sums and all costs and charges of the said distress and of the commitment and of the conveying of the said A. B., to the said common gaol are sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (name of county.)

**Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say,* 'inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B., and his family,' (*or* that the said A. B., has no goods or chattels where to levy the said sums by distress').

55-56 V., c. 29, sch. 1, form YY.

FORM 35.

(Section 727.)

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Canada,
Province of
County of } :

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D., appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here, to answer to the said complaint, and to be further dealt with according to law), and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then I adjudge the said A. B. to be imprisoned in the common gaol of the said county at , in the said county of , (there to be kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , unless the said several sums and the costs and charges of the commitment and of the conveying of the said A. B. to the said common gaol are sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form ZZ.

FORM 36.

(Section 727.)

ORDER FOR ANY OTHER MATTER WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Canada,
Province of
County of } :

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place where and when they occurred*); and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me, upon oath, that the said A. B., was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here, to answer to the said complaint and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to (*here state the matter required to be done*), and if, upon a copy of the minute of this order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he neglects or refuses to obey the same, in that case I adjudge the said A. B., for such his disobedience, to be imprisoned in the common gaol of the said county, at , in the said county of , (there to be kept at hard labour, *if the Act or law authorizes this and it is so adjudged*) for the term of , unless the said order is sooner obeyed, and I do also adjudge the said A. B., to pay to the said C. D. the sum of for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or* on or before next), I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf I adjudge the said A. B. to be imprisoned in the said common gaol (there to be kept at hard labour (*if the Act or law author-*

izes this, and it is so adjudged) for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form AAA.

FORM 37.

(Section 730.)

FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
County of .

Be it remembered that on , information was laid (*or* complaint was made) before the undersigned, , a justice of the peace in and for the said county of , for that (*etc., as in the summons of the defendant*) and now at this day to wit, on , at (*if at any adjournment insert here*: 'to which day the hearing of this case was duly adjourned, of which the said C. D., had due notice.') both the said parties appear before me in order that I should hear and determine the said information (*or* complaint) (*or* the said A. B., appears before me, but the said C. D., although duly called, does not appear); [whereupon the matter of the said information (*or* complaint) being by me duly considered, it manifestly appears to me that the said information (*or* complaint) is not proved, and] (*if the informant or complainant does not appear, these words may be omitted,*) I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B., the sum of for his costs incurred by him in defence in his behalf; and if the said sum for costs is not paid forthwith (*or* on or before), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D., to be imprisoned in the common gaol of the said county , at , in the said county of (and

there kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , unless the said sum for costs, and all costs and charges of the said distress and of the commitment and of the conveying of the said C. D., to the said common gaol are sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form BBB.

FORM 38.

(Section 730.)

FORM OF CERTIFICATE OF DISMISSAL.

Canada,
Province of
County of ;

I hereby certify that an information (*or* complaint) preferred by C. D., against A. B., for that (*etc., as in the summons*) was this day considered by me, a justice of the peace in and for the said county of , and was by me dismissed (with costs).

Dated at , this day of , in the year

J. S.,
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form CCC.

FORM 39.

(Section 741.)

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY.

Canada,
Province of
County of ;

To all or any of the constables and other peace officers in the said county of .

Whereas A. B., late of , (*labourer*), was on this day (*or* on last past) duly convicted before , a justice of the peace, in and for the said county of for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B., should for such his offence, forfeit and pay (*etc., as in the conviction*), and should also pay to the said C. D. the sum of , for his costs in that behalf; and it was thereby ordered that if the said several sums were not paid (forthwith) the same should be levied by distress and sale of the goods and chattels of the said A. B., and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labour *if the conviction so adjudges*) for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B., to the said common gaol were sooner paid; *And whereas the said A. B., being so convicted as aforesaid, and being (now) required to pay the said sums of and has not paid the same or any part thereof, but therein has made default: These are, therefore, to command you in His Majesty's name forthwith to make distress of the goods and chattels of the said A. B.; and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me, the convicting justice (*or* one of the convicting justices), that I may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.: and if no such distress is found, then to certify the same unto me, that such further proceedings may be had thereon as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. R. (name of county.)

55-56 V., c. 29, sch. 1, form DDD.

FORM 40.

(Section 741.)

WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY.

Canada,
Province of
County of

To all or any of the constables and other peace officers in the said county of .

Whereas on , last past, a complaint was made before , a justice of the peace in and for the said county, for that (*etc., as in the order*), and afterwards, to wit, on , at , the said parties appeared before (*as in the order*), and thereupon the matter of the said complaint having been considered, the said A. B., was adjudged to pay to the said C. D., the sum of , on or before then next, and also to pay to the said C. D., the sum of , for his costs in that behalf; and it was ordered that if the said several sums were not paid on or before the said then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B., should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labour *if the order so directs*) for the term of , unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A. B., to the said common gaol) were sooner paid; *And whereas the time in and by the said order appointed for the payment of the said several sums of , and has elapsed, but the said A. B., has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me (*or some other of the convicting justices, as the case may be*), that I

(*or* he) may pay or apply the same as by law directed, and may render the overplus, if any, on demand to the said A. B.; and if no such distress can be found, then to certify the same unto me, to the end that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form EEE.

FORM 41.

(Section 741.)

WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY IN THE FIRST INSTANCE.

Canada,
Province of
County of .

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the said county of , at , in the said county of .

Whereas A. B., late of , (*labourer*), was on this day convicted before the undersigned, , a justice of the peace in and for the said country, for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B., for his offence, should forfeit and pay the sum of (*etc., as in the conviction*), and should pay to the said C. D. the sum of , for his costs in that behalf; and it was thereby further adjudged that if the said several sums were not paid (forthwith) the said A. B. should be imprisoned in the common gaol of the county, at , in the said county of (and there kept at hard labour *if the conviction so adjudges*) for the term of , unless the said several sums and the costs and charges of the commitment and of the conveying of the said A. B. to the said common gaol were sooner paid; And whereas the time in and by the said conviction appointed for the payment of the said several sums has elapsed, but the said A. B., has not paid the same, or any part thereof, but therein has made default: These

are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there to deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B., into your custody in the said common gaol, there to imprison him (and keep him at hard labour *if the conviction so adjudges*) for the term of , unless the said several sums and the costs and charges of the commitment and of the conveying of the said A. B. to the said common gaol are sooner paid unto you, the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form FFF.

FORM 42.

(Section 741.)

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the county of , at , in the said county of .

Whereas, on last past, complaint was made before the undersigned , a justice of the peace in and for the said county of , for that (*etc., as in the order*), and afterwards, to wit, on the day of , at A. B. and C. D. appeared before me, the said justice (*or as it is in the order*), and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D. the sum of , on or before the day of then next, and also to pay to the said C. D. the sum of , for his costs in that

behalf; and I also thereby adjudged that if the said several sums were not paid on or before the day of then next, the said A. B. should be imprisoned in the common gaol of the county of , at , in the said county of (and there be kept at hard labour *if the order so directs*) for the term of unless the said several sums and the costs and charges of the commitment and of the conveying of the said A. B. to the said common gaol, were sooner paid; And whereas the time in and by the said order appointed for payment of the said several sums of money has elapsed, but the said A.B. has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, the said peace officers, or any of you, to take the said A. B. and him safely to convey to the said common gaol, at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B., into your custody in the said common gaol, there to imprison him (and keep him at hard labour *if the order so directs*) for the term of unless the said several sums and the costs and charges of the committment and of conveying him to the said common gaol are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form GGG.

FORM 43.

(Section 741.)

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., constable of , in the county of , hereby certify to J. S., Esquire, a justice of the peace in and for the county of , that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods

or chattels of the said A. B. thereon to levy the sums within mentioned.

Witness my hand, this day of , one thousand nine hundred and .

55-56 V., c. 29, sch 1, form III.

FORM 44.

(Section 741.)

WARRANT FOR COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of
County of :

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol of the said county of , at , in the said county.

Whereas (*etc., as in either of the foregoing distress warrants* 39 or 40, *to the asterisk,* * *and then thus*): And whereas, afterwards on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the county of , commanding them, or any of them, to levy the said sums of and by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return of the said warrant of distress by the peace officer who had the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there deliver him to the said keeper, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody, in the said common gaol, there to imprison him (and keep him at hard labour *if the order so directs*) for the term of , unless the said several sums, and all the costs and charges of the said distress and of the commitment and of the conveying of the

said A. B., to the said common gaol are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form JJJ.

FORM 45.

(Section 742.)

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR DISMISSAL OF AN INFORMATION OR COMPLAINT.

To all or any of the constables and other peace officers in the said county of .

Canada,
Province of
County of ; }

Whereas on last past, information was laid (*or* complaint was made) before , a justice of the peace in and for the said county of , for that (*etc., as in the order of dismissal*) and afterwards, to wit, on , at , both parties appearing before (*me*) , in order that (*I*) should hear and determine the same, and the several proofs adduced to (*me*) in that behalf, being by (*me*) duly heard and considered, and it manifestly appearing to (*me*) that the said information (*or* complaint) was not proved, (*I*) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of , for his costs incurred by him in his defence in that behalf; and (*I*) ordered that if the said sum for costs was not paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (*I*) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the common gaol of the said county of , at , in the said county of (and there kept at hard labour *if the order so directed*) for the space of unless the said sum for costs, and all costs and charges of the said distress and of the commitment and of

the conveying of the said A. B. to the said common gaol, were sooner paid; * And whereas the said C. D. being now required to pay to the said A. B., the said sum for costs, has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said C. D. and if within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to (*me*) that (*I*) may pay and apply the same as by law directed, and may render the overplus (if any) on demand to the said C. D., and if no distress can be found, then to certify the same unto (*me*) (*or* to any other justice of the peace for the said county), that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., 29, sch. 1, form KKK.

FORM 46.

(Section 742.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of , }
County of . }

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the said county of , at , in the said county of .

Whereas (*etc., as in form 45 to the asterisk,* * *and then thus*): And whereas afterwards, on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the said county, commanding them, or any one of them, to levy the said sum

of , for costs, by distress and sale of the goods and chattels of the said C. D.: And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said C. D., and him safely convey to the common gaol of the said county, at aforesaid, and there deliver him to the keeper thereof, together with this precept: And I hereby command you, the said keeper of the said common gaol, to receive the said C. D. into your custody in the said common gaol, there to imprison him (and keep him at hard labour *if the order so directed*) for the term of , unless the said sum, and all the costs and charges of the said distress and of the commitment and of the conveying of the said C. D. to the said common gaol are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form LLL.

FORM 47.

(Section 743.)

ENDORSEMENT IN BACKING A WARRANT OF DISTRESS.

Canada,
Province of
County of , }

Whereas proof upon oath has this day been made before me , a justice of the peace in and for the said county, that the name of J. S. to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned, I do therefore authorize W. T., who brings me this warrant, and all other persons to whom this warrant was

originally directed, or by whom the same may be lawfully executed, and also all peace officers in the said county of to execute the same within the said county.

Given under my hand this day of , one thousand nine hundred and

O. K.,
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form HHH.

FORM 48.

(Section 748.)

COMPLAINT BY THE PARTY THREATENED, FOR SURETIES FOR THE PEACE.

Canada,
Province of
County of

The information (*or* complaint) of C. D., of , in the said county of , (*labourer*), (*if preferred by an attorney or agent, say*—by D. E., his duly authorized agent (*or* atorney), in this behalf), taken upon oath, before me, the undersigned, a justice of the peace, in and for the said county of , at in the said county of , this day of in the year , who says that A. B., of , in the said county, did, on the day of (instant *or* last past), threaten the said C. D. in the words or to the effect following, that is to say: (*set them out, with the circumstances under which they were used*); and that from the above and other threats used by the said A. B., towards the said C. D., he, the said C. D., is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him, the said C. D.; and the said C. D. also says that he does not make this complaint against nor require such sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

55-56 V., c. 29, sch. 1, form WW.

FORM 49.

(Sections 748 and 1058.)

FORM OF RECOGNIZANCE TO KEEP THE PEACE.

Canada,
Province of
County of } :

Be it remembered that on the day of , in the year , A. B. of , (*labourer*), L. M. of ,(*grocer*), and N. O. of , (*butcher*), personally came before (*us*) the undersigned, (*two*) justices of the peace for the county of , and severally acknowledged themselves to owe to our Lord the King the several sums following, that is to say: the said A. B. the sum of and, the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he, the said A. B., fail in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at before us.

J. S.,

J. T.,

J. P. (*name of county.*)

The condition of the within (*or* above) written recognizance is such that if the within bound A. B. (of, etc.), keeps the peace and is of good behaviour towards His Majesty and his liege people, and especially towards C. D. (of, etc.), for the term of now next ensuing, then the said recognizance to be void, otherwise to stand in full force and virtue.
55-56 V., c. 29, sch. 1, form XXX.

FORM 50.

(Section 748.)

FORM OF COMMITMENT IN DEFAULT OF SURETIES.

Canada,
Province of
County of } :

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol of the said county, at , in the said county.

Whereas on the day of (*instant*), complaint on oath was made before the undersigned (*or* J. L., Esquire), a justice of the peace in and for the said county of , by C. D., of , in the said county, (*labourer*), that A. B., of (etc.), on the day of , at aforesaid, did threaten (*etc., follow to the end of complaint, as in form above, in the past tense, then*): And whereas the said A. B. was this day brought and appeared before me, the said justice (*or* J. L., Esquire, a justice of the peace in and for the said county of), to answer unto the said complaint; and having been required by me to enter into his own recognizance in the sum of), with two sufficient sureties in the sum of each, to keep the peace and be of good behaviour towards His Majesty and his liege people, and especially towards the said C. D., has refused and neglected, and still refuses and neglects, to find such sureties: These are, therefore, to command you, and each of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him for the space of or until he shall otherwise be discharged in due course of law, unless he, in the meantime, finds sufficient sureties to keep the peace as aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (name of county.)

55-56 V., c. 29, sch. 1, form YYY.

FORM 51.

(Section 750.)

FORM OF RECOGNIZANCE TO TRY THE APPEAL.

Canada,
Province of
County of } :

Be it remembered that on , A. B., of , (*labourer*), and L. M., of , (*grocer*), and N. O. of , (*yeoman*), personally came before the undersigned , a justice of the peace in and for the said county of , and severally acknowledged themselves to owe to our Sovereign Lord the King, the several sums following, that is to say, the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he the said A. B. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.,
J. P. (*name of county.*)

The condition of the within (*or* the above) written recognizance is such that if the said A. B. personally appears at the (next) General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions, as the case may be*), to be holden at , on the day of , next, in and for the said county of , and tries an appeal against a certain conviction, bearing date the day of , (*instant*), and made by (*me*) the said justice whereby he, the said A. B., was convicted, for that he, the said A. B. did, on the day of , at , in the said county of , (*here set out the offence as stated in the conviction*); and also abides by the judgment of the court upon such appeal and pays such costs as are by the court awarded, then the said recognizance to be void, otherwise to remain in full force and virtue.

FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE APPELLANT AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of , and you, L. M. and N. O., in the sum of , each, that you the said A. B. will personally appear at the next General Sessions of the Peace to be holden at , in and for the said county of , and try an appeal against a conviction (*or* order) dated the day of , (*instant*), whereby you A. B. were convicted of (*or* ordered, *etc.*,) (*stating offence or the subject of the order shortly*), and abide by the judgment of the court upon such appeal and pay such costs as are by the court awarded, and unless you the said A. B. personally appear and try such appeal and abide by such judgment and pay such costs accordingly, the recognizance entered into by you will forthwith be levied on you, and each of you.

Dated at , this day of , one thousand nine hundred and .

55-56 V. c. 29, sch. 1, form OOO.

FORM 52.

(Section 759.)

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID.

Office of the clerk of the peace for the county of .

TITLE OF THE APPEAL.

I hereby certify that at a Court of General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions as the case may be*), holden at , in and for the said county, on last past, an appeal by A. B., against a conviction (*or* order) of J. S., Esquire, a justice of the peace in and for the said county, came on to be tried, and was there heard and determined, and the said Court of General Sessions (*or other court, as the case may be*) thereupon ordered that the said conviction (*or* order should be confirmed (*or* quashed), and that the said (appellant) should pay to the said (respondent) the sum of , for his costs

incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace for the said county, on or before the day of (*instant*), to be by him handed over to the said (respondent), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated at , this day of , one thousand nine hundred and .

G. H.,
Clerk of the Peace.

55-56 V., c. 29, sch. 1, form PPP.

FORM 53.

(Section 759.)

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST A CONVICTION OR ORDER.

Canada,
Province of
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas (*etc., as in the warrants of distress, forms 39 or 40, and to the end of the statement of the conviction or order, and then thus*): And whereas the said A. B. appealed to the Court of General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions, as the case may be*), for the said county, against the said conviction or order, in which appeal he said A. B. was the appellant, and the said C. D. (*or*) J. S., Esquire, the justice of the peace who made the said conviction (*or* order) was the respondent, and which said appeal came on to be tried and was heard and determined at the last General Sessions of the Peace (*or other court, as the case may be*) for the said county, holden at , on ; and the said court thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed) and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace for the said county, on or before the day

of , one thousand nine hundred and , to be by him handed over to the said C. D.; and whereas the clerk of the peace of the said county has, on the day of (*instant*), duly certified that the said sum for costs had not been paid: * These are, therefore, to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if, within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to the clerk of the peace for the said county of , that he may pay and apply the same as by law directed; and if no such distress can be found, then to certify the same unto me or any other justice of the peace for the said county, that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

O. K., [SEAL,]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form QQQ.

FORM 54.

(Section 759.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the said county at , in the said county.

Whereas (*etc., as in form 53, to the asterisk * and then thus*): And whereas, afterwards, on the day of , in the year aforesaid, I, the undersigned, issued a warrant to all or any of the peace officers in the said county of ,

commanding them, or any of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer who was charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sum above mentioned could be found: These are, therefore, to command you, the said peace officers or any one of you, to take the said A. B., and him safely to convey to the common gaol of the said county of , at aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him for the term of , unless the said sum and all costs and charges of the said distress and of the commitment and of the conveying of the said A. B. to the said common gaol, are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

O. K., [SEAL.]
J. P., (name of county.)

55-56 V., c. 29, sch. 1, form RRR.

FORM 55.

(Section 799.)

CONVICTION.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , A. B., being charged before me, the undersigned, , of the said (*city*) (and consenting to my trying the charge summarily), is convicted before me, for that he, the said A. B., (*etc., stating*

the offence, and the time and place when and where committed), and I adjudge the said A. B., for his said offence, to be imprisoned in the (and there kept at hard labour, *if it is so adjudged*) for the term of .

Given under my hand and seal, the day and year first above mentioned at aforesaid

G. F., [SEAL.]
Police magistrate
for
(*or as the case may be*).

55-56 V., c. 29, sch. 1, form QQ.

FORM 56.

(Section 799.)

CONVICTION UPON A PLEA OF GUILTY.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , A. B. being charged before me, the undersigned, of the said (*city*) (and consenting to my trying the charge summarily), for that he, the said A. B., (*etc., stating the offence, and the time and place when and where committed*), and pleading guilty to such charge, he is thereupon convicted before me of the said offence; and I adjudge him, the said A. B., for his said offence, to be imprisoned in the (and there kept at hard labour, *if it is so adjudged*) for the term of .

Given under my hand and seal, the day and year first above mentioned, at aforesaid.

G. F., [SEAL.]
Police magistrate
for
(*or as the case may be*).

55-56 V., c. 29, sch. 1, form RR.

FORM 57.

(Section 799.)

CERTIFICATE OF DISMISSAL.

Canada,
Province of
County of } :

I, the undersigned, , of the city (*or as the case may be*) of , certify that on the day of , in the year , at aforesaid, A. B., being charged before me (and consenting to my trying the charge summarily) for that he, the said A. B., (*etc., stating the offence charged, and the time and place when and where alleged to have been committed*), I did, after having summarily tried the said charge, dismiss the same.

Given under my hand and seal, this day of , in the year , at , aforesaid.

G. F., [SEAL.]
Police magistrate
for
(*or as the case may be*).

55-56 V., c. 29, sch. 1, form SS.

FORM 58.

(Section 813.)

CERTIFICATE OF DISMISSAL.

Canada,
Province of
County of } :

, justices of the peace for the of ,(*or if a recorder, etc.*, I a , of the , of , *as the case may be*), do hereby certify that on the day of , in the year , at , in the said of , A. B. was brought before us, the said justices (*or* me, the said), charged with the following offence, that is to say (*here state briefly the particulars of the charge*), and that we, the said jus-

tices, (*or* I, the said) thereupon dismissed the said charge.

Given under our hands and seals (*or* my hand and seal), this day of , in the year , at aforesaid

J. P. [SEAL]

J. R. [SEAL.]

or J. S. [SEAL.]

55-56 V., c. 29, sch. 1, form TT.

FORM 59.

(Section 814.)

CONVICTION.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , in the county of , A. B. is convicted before us, J. P. and J. R., justices of the peace for the said county (*or* me, S. J., recorder, of the , of , *or as the case may be*) for that he, the said A. B., did (*specify the offence and the time and place when and where the same was committed, as the case may be, but without setting forth the evidence*), and we, the said J. P. and J. R. (*or* I, the said S. J.) adjudge the said A. B., for his said offence, to be imprisoned in the with (*or* without) hard labour (*in the discretion of the justice*) for the space of , (*or* we) (*or I*) adjudge the said A. B., for his said offence, to forfeit and pay (*here state the penalty actually imposed*), and in default of immediate payment of the said sum, to be imprisoned in the with (*or* without) hard labour (*in the discretion of the justice*) for the term of , unless the said sum is sooner paid.

Given under our hands and seals (*or* my hand and seal), the day and year first mentioned.

J. P. [SEAL]

J. R. [SEAL.]

or J. S. [SEAL.]

55-56 V., c. 29, sch. 1, form UU.

FORM 60.

(Section 827.)

FORM OF RECORD WHEN THE PRISONER PLEADS GUILTY.

Canada,
Province of
County of } :

Be it remembered that A. B., being a prisoner in the gaol of the said county, on a charge of having on the day of , in the year , stolen, etc., (*one cow the property of* C. D., *or as the case may be, stating briefly the offence*), and being brought before me (*describe the judge*) on the day of , in the year , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that the said A. B. being then arraigned upon the said charge, he pleaded guilty thereof, whereupon I sentenced the said A. B. to (*here insert such sentence as the law allows and the judge thinks right*).

Witness my hand this day of , in the year

O. K.,
Judge

55-56 V., c. 29, sch. 1, form NN.

FORM 61.

(Section 833.)

FORM OF RECORD WHEN THE PRISONER PLEADS NOT GUILTY.

Canada,
Province of
County of } :

Be it remembered that A. B. being a prisoner in the gaol of the said county, committed for trial on a charge of having on day of , in the year stolen, etc., (*one cow, the property of* C. D., *or as the case may be, stating briefly the offence*) and having been brought before me (*describe the judge*) on the day of , in the year , and asked by me if he consented to be tried

before me without the intervention of a jury, consented to be so tried; and that upon the day of , in the year , the said A. B., being again brought before me for trial, and declaring himself ready, was arraigned upon the said charge and pleaded not guilty; and after hearing the evidence adduced, as well in support of the said charge as for the prisoner's defence (*or as the case may be*), I find him to be guilty of the offence with which he is charged as foresaid, and I accordingly sentence him to (*here insert such sentence as the law allows and the judge thinks right*), (*or* I find him not guilty of the offence with which he is charged, and discharge him accordingly).

Witness my hand at , in the county of , this day of , in the year .

O. K.,
Judge

55-56 V., c. 29, sch. 1, form MM.

FORM 62.

(Section 842.)

WARRANT TO APPREHEND WITNESS.

Canada,
Province of
County of ; }

To all or any of the constables and other peace officers in the said county of .

Whereas it having been made to appear before me, that E. F., of , in the said county of , is likely to give material evidence on behalf of the prosecution (*or* defence, *as the case may be*) on the trial of a certain charge of (*as theft, or as the case may be*), against A. B., and that the said E. F. was duly subpœnaed (*or* bound under recognizance) to appear on the day of , in the year , at , in the said county at o'clock (forenoon *or* afternoon, *as the case may be*), before me, to testify what he knows concerning the said charge against the said A. B.

And whereas proof has this day been made before me, upon

oath of such subpœna having been duly served upon the said E. F., (*or* of the said E. F. having been duly bound under recognizance to appear before me, *as the case may be*); and whereas the said E. F. has neglected to appear at the trial and place appointed, and no just excuse has been offered for such neglect: These are, therefore, to command you to take the said E. F., and to bring him and have him forthwith before me, to testify what he knows concerning the said charge against the said A. B., and also to answer his contempt for such neglect.

Given under my hand this day of , in the year .

O. K.,
Judge

55-56 V., c. 29, sch. 1, form OO.

FORM 63.

(Sections 845 and 856.)

HEADINGS OF INDICTMENT.

In the (*name of the court in which the indictment is found*).

The jurors for our Lord the King present that

(*Where there are more counts than one, add at the beginning of each count*).

'The said jurors further present that

55-56 V., c. 29, sch. 1, form EE.

FORM 64.

(Section 852.)

EXAMPLES OF THE MANNER OF STATING OFFENCES.

(*a*) A. murdered B. at , on

(*b*) A. stole a sack of flour from a ship called the , at , on .

(*c*) A. obtained by false pretences from B., a horse, a cart and the harness of a horse at , on .

(d) A. committed perjury with intent to procure the con-

viction of B. for an offence punishable with penal servitude, namely, robbery, by swearing on the trial of B. for the robbery of C. at the Court of Quarter Sessions for the county of Carleton, held at Ottawa, on the day of , 190 ; first, that he, A saw B. at Ottawa, on the day of ; secondly, that B. asked A. to lend B. money on a watch belonging to C.; thirdly, etc.

or

(*e*) The said A. committed perjury on the trial of B. at a Court of Quarter Sessions held at Ottawa, on for an assault alleged to have been committed by the said B. on C. at Ottawa, on the day of by swearing to the effect that the said B. could not have been at Ottawa, at the time of the alleged assault, inasmuch as the said A. had seen him at that time in Kingston.

(*f*) A., with intent to maim, disfigure, disable or do grievous bodily harm to B. or with intent to resist the lawful apprehension or detainer of A. (*or* C.), did actual bodily harm to B. (or D.).

(*g*) A., with intent to injure or endanger the safety of persons on the Canadian Pacific Railway, did an act calculated to interfere with an engine, a tender, and certain carriages on the said railway on at by (*describe with so much detail as is sufficient to give the accused reasonable information as to the acts or omissions relied on against him, and to identify the transaction*).

(*h*) A. published a defamatory libel on B. in a certain newspaper, called the , on the day of 190 , which libel was contained in an article headed or commencing (*describe with so much detail as is sufficient to give the accused reasonable information as to the part of the publication to be relied on against him*), and which libel was written in the sense of imputing that the said B. was (*as the case may be*).

55-56 V., c. 29, sch. 1, form FF.

FORM 65.

(Section 879.)

CERTIFICATE OF INDICTMENT BEING FOUND.

Canada,
Province of
County of

I hereby certify that at a Court of (Oyer and Terminer, *or* General Gaol Delivery, *or* General Sessions of the Peace) holden in and for the county of , at , in the said (county), on , a bill of indictment was found by the grand jury against A. B., therein described as A. B., late of , (*labourer*), for that he (*etc., stating shortly the offence*), and that the said A. B., has not appeared or pleaded to the said indictment.

Dated this day of , in the year

Z. X.
(*Title of officer.*)

55-56 V., c. 29, sch. 1, form GG.

FORM 66.

WARRANT TO APPREHEND A PERSON INDICTED.

(Section 880.)

Canada,
Province of
County of

To all or any of the constables and other peace officers in the said county of.

Whereas it has been duly certified by J D., clerk of the (*name the court*) (*or* E. G., deputy clerk of the Crown *or* clerk of the peace, *or as the case may be*), in and for the county of , that *etc., stating the certificate*): These are, therefore, to command you in His Majesty's name forthwith to apprehend the said A. B., and to bring him before (*me*) or some

other justice or justices of the peace in and for the said county, to be dealt with according to law.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*name of county.*)

55-56 V., c. 29, sch. 1, form HH.

FORM 67.

(Section 881.)

WARRANT OF COMMITMENT OF A PERSON INDICTED.

Canada,
Province of
County of

To all or any of the constables and other peace officers in the said county of , and the keeper of the common gaol, at , in the said county of .

Whereas by a warrant under the hand and seal of , (*a*) justice of the peace in and for the said county of , dated , after reciting that it had been certified by J. D. (*etc., as in the certificate*), the said justice of the peace commanded all or any of the constables or peace officers of the said county, in His Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*him*) the said justice of the peace or before some other justice or justices in and for the said county, to be dealt with according to law; and whereas the said A. B. has been apprehended under and by virtue of the said warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person who is named and charged as aforesaid in the said indictment: These are therefore to command you, the said constables and peace officers, or any of you, in His Majesty's name, forthwith to take and convey the said A. B. to the said common gaol at , in the said county of , and there to deliver him to the keeper thereof, together with this precept: And (*I*) hereby command you the said keeper to

receive the said A. B. into your custody in the said gaol and him there safely to keep until he shall thence be delivered by due course of law.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form II.

FORM 68.

(Section 882.)

WARRANT TO DETAIN A PERSON INDICTED WHO IS ALREADY IN CUSTODY FOR ANOTHER OFFENCE.

Canada,
Province of ,
County of .

To the keeper of the common gaol at in the said county of .

Whereas it has been duly certified by J. D., clerk of the (*name the court*) (*or* deputy clerk of the Crown *or* clerk of the peace of and for the county of , (*or as the case may be*), that (*etc., stating the certificate*); And whereas (I *am*) informed that the said A. B. is in your custody in the said common gaol at aforesaid, charged with some offence, or other matter; and it being now duly proved upon oath before (*me*) that the said A. B. so indicted as aforesaid, and the said A.B., in your custody, as aforesaid, are one and the same person: These are therefore to command you, in His Majesty's name, to detain the said A. B. in your custody in the common gaol aforesaid, until by a writ of *habeas corpus* he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, form JJ.

FORM 69.

(Section 925.)

CHALLENGE TO ARRAY.

Canada,
Province of
County of

The King
v.
C. D.

The said A. B., who prosecutes for our Lord the King (*or* the said C. D., *as the case may be*) challenges the array of the panel on the ground that it was returned by X. Y., sheriff of the county of (*or* E. F., deputy of X. Y., sheriff of the county of (*as the case may be*), and that the said X. Y. (*or* E. F., *as the case may be*) was guilty of partiality (*or* fraud, *or* wilful misconduct) on returning said panel

55-56 V., c. 29, sch. 1, form KK.

FORM 70.

(Section 936.)

CHALLENGE TO POLL.

Canada,
Province of
County of

The King
v.
C. D.

The said A. B., who prosecutes, *etc.*, (*or* the said C. D., *as the case may be*) challenges G. H., on the ground that his name does not appear in the panel, [*or* that he is not indifferent between the King and the said C. D., *or* that he was convicted and sentenced to (death, *or* penal servitude, *or* imprisonment with hard labour, *or* exceeding twelve months, *or* that he is disqualified as an alien.)

55-56 V., c. 29, sch. 1, form LL.

FORM 71.

(Section 1068.)

CERTIFICATE OF EXECUTION OF JUDGMENT OF DEATH.

I, A. B., surgeon (*or as the case may be*) of the (*describe the prison*), hereby certify that I, this day, examined the body of C. D. on whom judgment of death was this day executed in the said prison; and that on such examination I found that the said C. D. was dead.

(Signed), A. B.

Dated this day of , in the year .

55-56 V., c. 29, sch. 1, form UUU.

FORM 72.

(Section 168)

DECLARATION OF SHERIFF AND OTHERS.

We, the undersigned, hereby declare that judgment of death was this day executed on C. D., in the (*describe the prison*) in our presence.

Dated this day of , in the year

E. F., Sheriff of——

L. M., Justice of the Peace for——

G. H., Gaoler of——

55-56 V., c. 29, sch. 1, form VVV.

FORM 73.

(Section 1097.)

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE DEFENDANT'S RECOGNIZANCE.

I hereby certify that the said A. B. has not appeared at the time and place in the said condition mentioned, but therein has made default, by reason whereof the within written recognizance is forfeited.

Dated at

J. S., [SEAL.]

J. P. (*name of county.*)

55-56 V., c. 29, sch. 1, forms R and MMM.

FORM 74.

(Section 1105.)

WRIT OF FIERI FACIAS.

Edward VII., by the Grace of God, etc.

To the sheriff of , greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements, of each of the persons mentioned in the roll or extract to this writ annexed, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified; and if any of the said several debts cannot be levied, by reason that no goods or chattels, lands or tenements can be found belonging to the said persons, respectively, then, and in all such cases, that you take the bodies of such persons, and keep them safely in the gaol of your county, there to abide the judgment of our court (*as the case may be*) upon any matter to be shown by them, respectively, or otherwise to remain in your custody as aforesaid, until such debt is satisfied unless any of such persons respectively gives sufficient security for his appearance at the said court on the return day hereof, for which you will be held answerable; and that you do in the premises make appear before us in our court (*as the case may be,*) on the day of term next, and have then and there this writ. Witness, etc., G. H., clerk. (*as the case may be*).

55-56 V., c. 29, sch. 1, form TTT.

FORM 75.

(Section 1133.)

JUSTICES' RETURN.

RETURN of convictions made by me (*or us, as the case may be*), during the quarter ending , 19 .

Name of the Prosecutor.	Name of the Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justice.	Amount of Penalty. Fine or Damage.	Time when paid or to be paid to the said Justice.	To whom paid over by the said Justice.	If not paid, why not, and general observations if any

J. S., Convicting Justice
or
J. S. and O. K., Convicting Justices (*as the case may be*).

55-56 V., c. 29, sch. 1, form SSS.

CHAPTER 145

An Act Respecting Witnesses and Evidence.

SHORT TITLE.

1. Short Title.—This Act may be cited as the Canada Evidence Act, 56 V., c. 31, s. 1.

PART I.

APPLICATION.

2. Applies to all matters within legislative jurisdiction of Canada.—This Part shall apply to all criminal proceedings, and to all civil proceedings and other matters whatsoever respecting which the Parliament of Canada has jurisdiction in this behalf. 56 V., c. 31, s. 2.

O'Neil v. Attorney General of Canada (1896), 1 C. C. C., 303.
The evidence which would be sufficient in civil proceedings in the province to prove one of the material facts (ex. gr., service of documents) is likewise sufficient to prove that fact when alleged in a criminal prosecution. R. v. Rapay (1902), 7 C. C. C., 170.

WITNESSES.

3. No incompetency from interest or crime.—A person shall not be incompetent to give evidence by reason of interest or crime. 56 V., c. 31, s. 3.

4. Accused and wife or husband competent witnesses for defence.—Every person charged with an offence, and, except as in this section otherwise provided, the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence, whether the person so charged is charged solely or jointly with any other person.

2. **Wife or husband competent and compellable witnesses for prosecution.**—The wife or husband of a person charged with an offence against any of the sections two hundred and two to two hundred and six inclusive, two hundred and eleven to two hundred and nineteen inclusive, two hundred and thirty-eight, two hundred and thirty-nine, two hundred and forty-four, two hundred and nineteen inclusive, two hundred and thirty-three hundred and two inclusive, three hundred and seven to three hundred and eleven inclusive, three hundred and thirteen to three hundred and sixteen inclusive of the Criminal Code, shall be a competent and compellable witness for the prosecution without the consent of the person charged.

3. **Disclosure of communications during marriage not compellable.**—No husband shall be compellable to disclose any communication made to him by his wife during their marriage, and no wife shall be compellable to disclose any communication made to her by her husband during their marriage.

4. **Saving.**—Nothing in this section shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

5. **Failure to testify not to be commented on.**—The failure of the person charged,—or of the wife or husband of such person, to testify, shall not be made the subject of comment by the judge, or by counsel for the prosecution. 6 E. VII., c. 10, s. 1.

One co-defendant cannot be called as a witness by another co-defendant and compelled to give evidence, but a co-defendant may testify if he chooses to do so. R. v. Connors (1893), 5 C. C. C., 70.

An accused person examined as a witness on his own behalf, may be cross examined as to whether he has been previously convicted of an indictable offence, whether or not the charge upon which he is being tried sets out the fact of a previous conviction, and although no evidence of good character had been adduced for the defence. The question is relevant to the issue as affecting the credibility of the accused as a witness. R. v. D'Aoust (1902), 5 C. C. C., 407.

An accused person does not, by offering himself as a witness on his own behalf, become bound to write in the witness-box at the direction of the judge a specimen of his handwriting for comparison with a document in evidence. R. v. Grinder (1905), 10 C. C. C., 333.

A wife, called as a witness against her husband, is incompetent under the Canada Evidence Act, to disclose a communication made by her husband in the presence or hearing of herself and a third party which she will not undertake to say was not intended for her to hear. R. v. Wallace (1903), 6 C. C. C., 323.

The husband or wife of a person charged with an indictable offence is not only a competent witness for or against the person accused, but may also be compelled to testify. Evidence by the wife of the person accused

of acts performed by her under directions of counsel sent to her by the accused to give the directions, is not a communication from the husband to his wife in respect of which the Canada Evidence Act forbids her to testify. Gosselin v. R. (1903), 7 C. C. C., 139.

See also R. v. Simons (1834), 6 C. & P., 540; R. v. Bartlett, 7 C. & P., 832; R. v. Pamenter (1872), 12 Cox C. C., 177.

Comment by the prosecuting counsel before the jury in respect of the failure of prisoner's wife to testify is error entitling the prisoner to a new trial. The rule is to be applied, notwithstanding a subsequent withdrawal of the comment and notwithstanding the judge's direction to the jury to disregard it. The objection is not waived, because not taken at the time, and it is sufficient if drawn to the attention of the trial judge after the jury have retired to deliberate. R. v. Corby (1898), 1 C. C. C., 457.

The statutory rule prohibiting comment by the prosecuting counsel upon the failure of the accused to call his wife as a witness is an absolute one; and a new trial must be given to the accused upon its infraction, although the prisoner's counsel himself first commented thereon by way of explanation of the wife's absence in his address to the jury, and the prosecuting counsel's comment was made in contradiction of and reply to such explanation. R. v. Hill (1903), 7 C. C. C., 38.

A direction to the jury upon a criminal trial that the accused has failed to account for a particular occurrence when the onus is upon him to do so, is not a comment on the failure of the accused to testify within sec. 4 of the Canada Evidence Act, nor a ground for a new trial. R. v. Aho (1904), 8 C. C. C., 453.

Only the person then on trial is a "person charged" within the meaning of the Canada Evidence Act, sec. 4, and comment is not prohibited as to the failure of the accused to call as a witness the person jointly indicted with him, but whose trial has been ordered to be separate. R. v. Blais (1906), 10 C. C. C., 354.

Notwithstanding sec. 4, of the Canada Evidence Act prohibiting comment upon the prisoner's failure to testify, the court may instruct the jury that the prisoner is entitled under the law to remain silent at the trial. R. v. MacLean (1906), 11 C. C. C., 283.

See also R. v. King (1905), 9 C. C. C., 426; R. v. McGuire (1904), 9 C. C. C., 554; R. v. Burdell (1906), 10 C. C. C., 365.

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5. Incriminating questions.—No witness shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.

2. **Answer not receivable against witness.**—If with respect to any question a witness objects to answer upon the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if but for this Act, or the act of any provincial legislature, the witness would therefore have been excused from answering such question, then although the witness is by reason of this Act, or by reason of such provincial act, compelled to answer, the answer so given shall not be used or receivable in evidence against him in any criminal

trial, or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of such evidence. 61 V., c. 53, s. 1; 1 E. VII., c. 36, s. 1.

A witness who is not a party to the indictment for theft submitted to the jury, cannot be excused from answering questions on the ground that he himself is indicted with another as receiver of the goods stolen, and that his answers might incriminate him; but his objections should be noted and the evidence should not be used against him at his trial. R. v. McLinehy, 2 C. C. C., 416.

If a witness when called upon to testify in a criminal proceeding does not object to do so upon the ground that his answers may tend to criminate him, they are receivable against him in any criminal proceeding against him thereafter other than a prosecution for perjury in giving such evidence, and if he does object he is bound to answer, but his answers are then not receivable in evidence against him in a subsequent criminal proceeding except such a charge of perjury. R. v. Clark (1901), 5 C. C. C., 235.

Where two prisoners are jointly indicted, but an order is made for their separate trial, the one is an admissible witness for the other and is bound to testify, although he may prevent his evidence being used against himself at his subsequent trial. R. v. Blais (1906), 10 C. C. C., 354.

The depositions of a judgment debtor upon his examination as to means may be proved in evidence against him upon a criminal charge of disposal of property in fraud of creditors, unless at the time of the examination he objected to answer on the ground that his answer might tend to criminate him.

If the examination were before a duly authorized authority, the admissions then made in answer to questions not objected to, may be afterwards used against the accused, although such questions were not pro- the scope of the examination. R. v. Van Meter (1906), 11 C. C. C., 207.

6. Evidence of mute.—A witness who is unable to speak, may give his evidence in any other manner in which he can make it intelligible. 56 V., c. 31, s. 6.

7. Expert witnesses.—Not more than five without leave.—Where, in any trial or other proceeding, criminal or civil, it is intended by the prosecution or the defence, or by any party, to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence, not more than five of such witnesses may be called upon either side without the leave of the court or judge or person presiding.

2. **When leave to be obtained.**—Such leave shall be applied for before the examination of any of the experts who may be examined without such leave. 2 E. VII., c. 9, s. 1.

8. **Hand-writing, comparison.**—Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute. 55-56 V., c. 29, s. 698.

This section was formerly section 698 of the Criminal Code, 1892.

A jury may properly make a comparison of doubtful or disputed handwriting, and draw their own conclusions as to its authenticity, if the admittedly genuine handwriting and the disputed handwriting are both in evidence for some purpose in the case, although no witness was called to prove the handwriting to be the same in both. R. v. Dixon (1897), 3 C. C. C., 220.

9. Adverse witnesses may be contradicted.—Previous statements.—A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but if the witness, in the opinion of the court, proves adverse, such party may contradict him by other evidence, or, by leave of the court, may prove that the witness made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. 55-56 V., c. 29, s. 699.

This section was formerly section 699 of the Criminal Code, 1892.

The word "adverse" as used in this section means "hostile" and not simply "unfavorable." Greenough v. Eccles. (1859), 28 L. J. C. P., 160.

The party in whose behalf a witness is called is not debarred by this section from proving by other witnesses any relevant facts inconsistent with or contradictory of such witness's testimony without a ruling that the witness is hostile to the party calling him. R. v. Laurin (1902), 6 C. C. C., 135.

10. Cross-examination as to previous statements in writing.—Upon any trial a witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, relative to the subject-matter of the case, without such writing being shown to him: Provided that, if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and that the judge, at any time during the trial, may require the production of the writing for his inspection, and thereupon make such use of it for the purpose of the trial as he thinks fit.

2. **Deposition of witness in criminal investigation.**—A deposition of the witness, purporting to have been taken before a justice on the investigation of a criminal charge and to be signed by the witness and the justice, returned to and produced from the custody of the proper officer, shall be presumed *prima facie* to have been signed by the witness. 55-56 V., c. 29, s. 700.

This section was formerly section 700 of the Criminal Code, 1892.

See R. v. Troop (1898), 2 C. C. C., 22; Taylor on Evidence, sec. 552.

11. Cross-examination as to previous oral statements.—If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the case and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. 55-56 V., c. 29, s. 701.

This section was formerly section 701 of the Criminal Code, 1892.

On a charge of forcible entry, evidence relating to the title of the occupant is not admissible; and a statement in the cross-examination of the accused denying that he had previously stated that he had sold the land to complainant is not one "relative to the subject matter of the case," but as to a collateral matter, and evidence to contradict his denial was improperly received in reply. R. v. Walker (1906), 12 C. C. C., 198.

Whether or not the conditions required by this section to justify the admission of rebuttal testimony contradicting a witness who has denied making an alleged statement to a third party at variance with her testimony, have been fulfilled, is a question for the presiding judge, and, if reasonably exercised, is not a ground for a new trial on a case reserved. R. v. Clarke (1907), 12 C. C. C., 300.

12. Examination as to previous conviction.—A witness may be questioned as to whether he has been convicted of any offence, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction.

2. **How conviction proved.**—The conviction may be proved by producing,—

(a) a certificate containing the substance and effect only, omitting the formal part, of the indictment and conviction, if it is for an indictable offence, or a copy of the summary conviction, if for an offence punishable upon summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court in which the conviction, if upon indictment, was had, or to which the conviction, if summary, was returned; and,

(b) proof of identity. 55-56 V., c. 29, s. 695.

This section was formerly section 695 of the Criminal Code, 1892.

OATHS AND AFFIRMATIONS.

13. Who may administer oaths.—Every court and judge, and every person having, by law or consent of parties, author-

ity to hear and receive evidence, shall have power to administer an oath to every witness who is legally called to give evidence before that court, judge or person. 56 V., c. 31, s. 22.

14. Affirmation by witness instead of oath.—If a person called or desiring to give evidence, objects, on grounds of conscientious scruples, to take an oath, or is objected to as incompetent to take an oath, such person may make the following affirmation:—

'I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth.'

2. **Effect.**—Upon the person making such solemn affirmation, his evidence shall be taken and have the same effect as if taken under oath. 56 V., c. 31, s. 23.

15. Affirmation by deponent.—If a person required or desiring to make an affidavit or deposition in a proceeding or on an occasion whereon or touching a matter respecting which an oath is required or is lawful, whether on the taking of office or otherwise, refuses or is unwilling to be sworn, on grounds of conscientious scruples, the court or judge, or other officer or person qualified to take affidavits or depositions, shall permit such person, instead of being sworn, to make his solemn affirmation in the words following, viz.; 'I, A. B., do solemnly affirm, etc.;' which solemn affirmation shall be of the same force and effect as if such person had taken an oath in the usual form.

2. **Effect.**—Any witness whose evidence is admitted or who makes an affirmation under this or the last preceding section shall be liable to indictment and punishment for perjury in all respects as if he had been sworn. 56 V., c. 31, s. 24.

16. Evidence of child.—In any legal proceeding where a child of tender years is offered as a witness, and such child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

2. **Must be corroborated.**—No case shall be decided upon such evidence alone, and such evidence must be corroborated by some other material evidence. 56 V., c. 31, s. 25.

See R. v. De Wolfe (1904), 9 C. C. C., 38.

JUDICIAL NOTICE.

17. Imperial Acts, etc.—Judicial notice shall be taken of all Acts of the Imperial Parliament, of all ordinances made by the Governor in Council, or the lieutenant governor in council of any province or colony which, or some portion of which, now forms or hereafter may form part of Canada, and of all the acts of the legislature of any such province or colony, whether enacted before or after the passing of *The British North America Act, 1867*, 56 V., c. 31, s. 7.

See R. v. Gillespie (1898), 1 C. C. C., 551.

18. Acts of Canada.—Judicial notice shall be taken of all public Acts of the Parliament of Canada without such Acts being specially pleaded. R.S., c. 1, s. 7.

DOCUMENTARY EVIDENCE.

19. Copies by King's Printer.—Every copy of any Act of the Parliament of Canada, public or private, printed by the King's Printer, shall be evidence of such Act and of its contents; and every copy purporting to be printed by the King's Printer shall be deemed to be so printed, unless the contrary is shown. R.S., c. 1, s. 7.

20. Imperial proclamations, etc.—Imperial proclamations, orders in council, treaties, orders, warrants, licenses, certificates, rules regulations, or other Imperial official records, Acts or documents may be proved,—

(a) in the same manner as they may from time to time be provable in any court in England; or,

(b) by the production of a copy of the *Canada Gazette*, or a volume of the Acts of the Parliament of Canada purporting to contain a copy of the same or a notice thereof; or,

(c) by the production of a copy thereof purporting to be printed by the King's Printer for Canada. 56 V., c. 31, s. 11.

21. Proclamations, etc., of Governor General.—Evidence of any proclamation, order, regulation or appointment, made or issued by the Governor General or by the Governor in Council, or by or under the authority of any minister or head of any department of the Government of Canada, may be given in all or any of the modes following, that is to say:—

(a) By the production of a copy of the *Canada Gazette*, or a

volume of the Acts of the Parliament of Canada purporting to contain a copy of such proclamation, order, regulation, or appointment or a notice thereof;

(b) By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the King's Printer for Canada; and,

(c) By the production, in the case of any proclamation, order, regulation or appointment made or issued by the Governor General or by the Governor in Council, of a copy or extract purporting to be certified to be true by the clerk, or assistant or acting clerk of the King's Privy Council for Canada; and in the case of any order, regulation or appointment made or issued by or under the authority of any such minister or head of a department, by the production of a copy or extract purporting to be certified to be true by the minister, or by his deputy or acting deputy, or by the secretary or acting secretary of the department over which he presides. 56 V., c. 31, s. 8.

22. Proclamations, etc., of Lieutenant Governor.—Evidence of any proclamation, order, regulation or appointment made or issued by a lieutenant governor or lieutenant governor in council of any province, or by or under the authority of any member of the executive council, being the head of any department of the government of the province, may be given in all or any of the modes following, that is to say,—

(a) By the production of a copy of the official gazette for the province, purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof;

(b) By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the government or King's printer for the province;

(c) By the production of a copy or extract of such proclamation, order, regulation or appointment, purporting to be certified to be true by the clerk or assistant or acting clerk of the executive council, or by the head of any department of the government of a province, or by his deputy or acting deputy as the case may be.

2. **In the case of the Territories.**—*Prima facie* evidence of any proclamation, order, regulation or appointment made by the lieutenant governor or lieutenant governor in council of the Northwest Territories, as constituted previously to the first day of September, one thousand nine hundred and five, or of the commissioner in council of the Northwest Territories as now constituted, or of the commissioner in council of the Yukon Territory, may also be given by the production of a copy of the *Canada*

Gazette purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof. R.S., c. 50, s. 111; 56 V., c. 31, s. 9.

23. Evidence of judicial proceedings, etc.—Evidence of any proceeding or record whatsoever of, in, or before any court in the United Kingdom, or the Supreme or Exchequer Courts of Canada, or any court in any province of Canada, or any court in any British colony or possession, or any court of record of the United States of America, or of any state of the United States of America, or of any other foreign country, or before any justice of the peace or coroner in any province of Canada, may be made in any action or proceeding by an exemplification or certified copy thereof, purporting to be under the seal of such court, or under the hand or seal of such justice or coroner, as the case may be, without any proof of the authenticity of such seal or of the signature of such justice or coroner, or other proof whatever.

2. **Certificate if court has no seal.**—If any such court, justice or coroner, has no seal, or so certifies, such evidence may be made by a copy purporting to be certified under the signature of a judge or presiding magistrate of such court or of such justice or coroner, without any proof of the authenticity of such signature, or other proof whatsoever. 56 V., c. 31, s. 10.

24. Official documents of Canada.—In every case in which the original record could be received in evidence,—

(a) a copy of any official or public document of Canada or of any province, purporting to be certified under the hand of the proper officer or person in whose custody such official or public document is placed; or,

(b) a copy of a document, by-law, rule, regulation or proceeding, or a copy of any entry in any register or other book of any municipal or other corporation, created by charter or statute of Canada or of any province, purporting to be certified under the seal of the corporation, and the hand of the presiding officer, clerk or secretary thereof;

shall be receivable in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof. 56 V., c. 31, s. 12.

25. Books and documents.—Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other statute exists which renders its contents provable by means of a

copy, a copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before a person having, by law or by consent of parties, authority to hear, receive and examine evidence, if it is proved that it is a copy or extract purporting to be certified to be true by the officer to whose custody the original has been entrusted. 56 V., c. 31, s. 13.

26. Entries in books of Government departments.—A copy of any entry in any book kept in any department of the Government of Canada, shall be received as evidence of such entry and of the matters, transactions and accounts therein recorded, if it is proved by the oath or affidavit of an officer of such department that such book was, at the time of the making of the entry, one of the ordinary books kept in such department, that the entry was made in the usual and ordinary course of business of such department, and that such copy is a true copy thereof. 56 V., c. 31, s. 17.

27. Notarial acts in Quebec.—Any document purporting to be a copy of a notarial act or instrument made, filed or enregistered in the province of Quebec, and to be certified by a notary or prothonotary to be a true copy of the original in his possession as such notary or prothonotary, shall be received in evidence in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved: Provided that it may be proved in rebuttal that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may, by the law of the province of Quebec, be taken before a notary or be filed, enrolled or enregistered by a notary in the said province. 56 V., c. 31, s. 18.

28. Notice of production of book or document.—No copy of any book or other document shall be received in evidence, under the authority of any of the last five preceding sections, upon any trial, unless the party intending to produce the same has before the trial given to the party against whom it is intended to be produced reasonable notice of such intention.

2. **Not less than 10 days.**—The reasonableness of the notice shall be determined by the court or judge, but the notice shall not in any case be less than ten days. 56 V., c. 31, s. 19.

29. Order signed by Secretary of State.—Any order in writing, signed by the Secretary of State of Canada, and purporting to be written by command of the Governor General, shall

be received in evidence as the order of the Governor General. 56 V., c. 31, s. 15.

30. Copies printed in Canada Gazette.—All copies of official and other notices, advertisements and documents printed in the *Canada Gazette* shall be *prima facie* evidence of the originals, and of the contents thereof. 56 V., c. 31, s. 16.

31. Proof of handwriting of person certifying not required.—No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this Act, to the truth of any copy of or extract from any proclamation, order, regulation, appointment, book or other document.

2. **Printed or written.**—Any such copy or extract may be in print or in writing, or partly in print and partly in writing. 56 V., c. 31, s. 14.

32. Attesting witness.—It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite.

2. **Instrument how proved.**—Such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto. 55-56 V., c. 29, s. 696.

This section was formerly section 696 of the Criminal Code, 1892.

33. Forged instrument may be impounded.—Whenever any instrument which has been forged or fraudulently altered is admitted in evidence the court or the judge or person who admits the instrument may, at the request of any person against whom it is admitted in evidence, direct that the instrument shall be impounded and be kept in the custody of some officer of the court or other proper person for such period and subject to such conditions as to the court, judge or person admitting the instrument seems meet. 55-56 V., c. 29, s. 720.

This section was formerly section 720 of the Criminal Code, 1892.

When documents filed as exhibits in a civil suit form the subject matter of indictment for forgery and uttering, they may be impounded on application of the Attorney-General *pro Regina.* Couture v. Fortier (1895), 7 R. J. S. C., 197 (Quebec).

34. Construction of Act.—The provisions of this Part shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any existing statute, or existing at law. 56 V., c. 31, s. 20.

PROVINCIAL LAWS OF EVIDENCE.

35. How applicable.—In all proceedings over which the Parliament of Canada has legislative authority, the laws of evidence in force in the province in which such proceedings are taken, including the laws of proof of service of any warrant, summons, subpœna or other document, shall, subject to the provisions of this and other Acts of the Parliament of Canada, apply to such proceedings. 56 V., c. 31, s. 21.

See R. v. Garneau (1899), 4 C. C. C., 69 (Quebec).

STATUTORY DECLARATIONS.

36. Solemn declaration.—Any judge, notary public, justice of the peace, police or stipendiary magistrate, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or Dominion courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the same before him, in the form following, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:—

I, A. B., do solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

Declared before me
at this day of A.D. 19

56 V., c. 31, s. 26, and sch. A.

INSURANCE PROOFS.

37. Affidavits, etc., may be taken before commissioner.—Any affidavit, affirmation or declaration required by any insurance company authorized by law to do business in Canada, in regard to any loss of, or injury to person, property or life insured or assured therein, may be taken before any commissioner or other person authorized to take affidavits, or before any justice of the peace, or before any notary public for any province of Canada; and such officer is hereby required to take such affidavit, affirmation or declaration. 56 V., c. 31, s. 27.

PART II.

APPLICATION.

38. Foreign courts.—This Part applies to the taking of evidence relating to proceedings in courts out of Canada.

INTERPRETATION.

39. Definitions.—In this Part, unless the context otherwise requires,—

(a) 'court' means and includes the Supreme Court of Canada, and any superior court in any province of Canada;

(b) 'judge' means and includes any judge of the Supreme Court of Canada and any judge of any superior court in any province of Canada;

(c) 'cause' includes a proceeding against a criminal;

(d) 'oath' includes affirmation in cases in which by the law of Canada, or of the province, as the case may be, an affirmation is allowed instead of an oath. R.S., c. 140, ss. 1 and 6.

40. Construction.—This Part shall not be so construed as to interfere with the right of legislation of the legislature of any province requisite or desirable for the carrying out of the objects hereof. R.S., c. 140, s. 8.

PROCEDURE.

41. Order for examination of witness in Canada in relation to foreign suit, etc.—Whenever, upon an application for that purpose, it is made to appear to any court or judge, that any court or tribunal of competent jurisdiction, in any other of His Majesty's dominions, or in any foreign country, before which any civil, commercial or criminal matter is pending, is desirous of obtaining the testimony in relation to such matter, of any party or witness within the jurisdiction of such first mentioned court, or of the court to which such judge belongs, or of such judge, such court or judge may, in its or his discretion, order the examination upon oath upon interrogatories, or otherwise, before any person or persons named in such order, of such party or witness accordingly, and by the same or any subsequent order may command the attendance of such party or witness for the purpose of being examined, and for the production of any writings or other documents mentioned in such order, and of any other writings or

documents relating to the matter in question that are in the possession or power of such party or witness. R.S., c. 140, s. 2.

42. Enforcement of such order.—Upon the service upon such party or witness of such order, and of an appointment of a time and place for the examination of such party or witness signed by the person named in such order for taking the same, or, if more than one person is named, then by one of the persons named, and upon payment or tender of the like conduct money as is properly payable upon attendance at a trial, such order may be enforced in like manner as an order made by such court or judge in a cause depending in such court or before such judge. R.S., c. 140, s. 3.

43. Expenses and conduct money.—Every person whose attendance is required in manner aforesaid shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial. R.S., c. 140, s. 4.

44. Who shall administer oath.—Upon any examination of parties or witnesses, under the authority of any order made in pursuance of this Part, the oath shall be administered by the person authorized to take the examination, or, if more than one, then by one of such persons. R.S., c. 140, s. 6.

45. Right of refusal to answer or produce document.—Any person examined under any order made under this Part shall have the like right to refuse to answer questions tending to criminate himself, or other questions, as a party or witness, as the case may be, would have in any cause pending in the court by which, or by a judge whereof, such order is made.

2. **Same as upon trial of cause.**—No person shall be compelled to produce, under any such order, any writing or other document that he could not be compelled to produce at a trial of such a cause. R.S., c. 140, s. 6.

46. Court may make rules.—The court may frame rules and orders in relation to procedure, to the evidence to be produced in support of the application for an order for examination of parties and witnesses under this Part, and generally for carrying this Part into effect.

2. **Letters rogatory sufficient evidence.**—In the absence of any order in relation to such evidence, letters rogatory from any court of justice in any other of the dominions of His Majesty, or from any foreign tribunal, in which such civil, commercial or criminal matter is pending, shall be deemed and taken to be sufficient evidence in support of such application. R.S., c. 140, s. 7.

CHAPTER 122

An Act Respecting Money-Lenders

1. Short title.—This Act may be cited as the Money-Lenders Act. 6 E. VII., c. 32, s. 1.

2. Definition. 'Money-lender.'—'Money-lender' in this Act includes any person who carries on the business of money-lending, or advertises, or announces himself, or holds himself out in any way, as carrying on that business, and who makes a practice of lending money at a higher rate than ten per centum per annum, but does not comprise registered pawnbrokers as such. 6 E. VII., c. 32, s. 2.

3. Not applicable to Yukon.—This Act shall not apply to the Yukon Territory. 6 E. VII., c. 32, s. 11.

4. Limitation as to small loans.—This Act shall not apply to any loan or transaction in which the whole interest or discount charged or collected in connection therewith does not exceed the sum of fifty cents. 6 E. VII., c. 32, s. 10.

5. Act not to increase existing rate of interest.—Nothing in this Act shall operate to increase the rate of interest that may be recovered in any case where by law the rate is fixed at less than twelve per centum per annum. 6 E. VII., c. 32, s. 8.

6. Interest on negotiable instruments, contracts, etc., limited to 12 per cent. per annum.—And to 5 per cent. after judgment rendered.—Notwithstanding the provisions of the Interest Act, no money-lender shall stipulate for, allow or exact on any negotiable instrument, contract or agreement, concerning a loan of money, the principal of which is under five hundred dollars, a rate of interest or discount greater than twelve per centum per annum; and the said rate of interest shall be re-

duced to the rate of five per centum per annum from the date of judgment in any suit, action or other proceeding for the recovery of the amount due. 6 E. VII., c. 32, s. 3

7. Powers to court for inquiry into transaction and relief of debtor.—Lender to repay excess.—In any suit, action or other proceeding concerning a loan of money by a money-lender the principal of which was originally under five hundred dollars, wherein it is alleged that the amount of interest paid or claimed exceeds the rate of twelve per centum per annum, including the charges for discount, commission, expenses, inquiries, fines, bonus, renewals, or any other charges, but not including taxable conveyancing charges, the court may re-open the transaction and take an account between the parties, and may, notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, reopen any account already taken between the parties, and relieve the person under obligation to pay from payment of any sum in excess of the said rate of interest; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it, and may set aside, either wholly or in part, or revise, or alter, any security given in respect of the transaction. 6 E. VII., c. 32, s. 4.

8. Exception in case of negotiable instrument.—The *bona fide* holder, before maturity, of a negotiable instrument discounted by a preceding holder at a rate of interest exceeding that authorized by this Act, may nevertheless recover the amount thereof, but the party discharging such instrument may reclaim from the money-lender any amount paid thereon for interest or discount in excess of the amount allowed by this Act. 6 E. VII., c. 32, s. 5.

9. Act to apply to existing contracts.—And to existing judgments.—The principal of any sum of money, originally under five hundred dollars, due and payable before the thirteenth day of July, one thousand nine hundred and six, in virtue of any negotiable instrument given to a money-lender, or of any contract or agreement entered into with such money-lender in respect of money lent by him, shall not, from and after the said date, bear a rate of interest greater than twelve per centum per annum; and from and after the said date no rate of interest greater than five per centum per annum shall be recovered upon any judgment, rendered before the said date, upon any such negotiable instrument, contract or agreement for the payment of

money lent by a money-lender, and which allows a greater rate than five per centum per annum. 6 E. VII., c. 32, s. 6.

10. As to instruments and contracts not yet matured.—In the case of any such negotiable instrument made before the thirteenth day of July, one thousand nine hundred and six, and maturing after the said date, and in the case of any such contract or agreement made before the said date and to be performed thereafter, the foregoing provisions of this Act shall apply only from the date of maturity or performance, as the case may be. 6 E. VII., c. 32, s. 7.

11. Penalty.—Every money-lender is guilty of an indictable offence and liable to imprisonment for a term not exceeding one year, or to a penalty not exceeding one thousand dollars, who lends money at a rate of interest greater than that authorized by this Act. 6 E. VII., c. 32, s. 9.

CHAPTER 150

An Act to provide for the Conditional Liberation of Convicts.

SHORT TITLE.

1. Short title.—This Act may be cited as the Ticket of Leave Act. 63-64 V., c. 48, s. 2.

TICKET OF LEAVE.

2. Granting of license to convicts.—The Governor General by an order in writing under the hand and seal of the Secretary of State may grant to any convict, under sentence of imprisonment in a penitentiary, gaol or other public or reformatory prison, a license to be at large in Canada, or in such part thereof as in such license shall be mentioned, during such portion of his term of imprisonment, and upon such conditions in all respects as to the Governor General may seem fit.

2. **Revocation or alteration of same.**—The Governor General may from time to time revoke or alter such license by a like order in writing. 62-63 V., c. 49, s. 1; 63-64 V., c. 48, s. 1.

3. Sentence deemed to continue although execution is suspended.—The conviction and sentence of any convict to whom a license is granted under this Act shall be deemed to continue in force while such license remains unforfeited and unrevoked, although execution thereof is suspended; but, so long as such license continues in force and unrevoked or unforfeited, such convict shall not be liable to be imprisoned by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license. 62-63 V., c. 49, ss. 2 and 10.

4. Form of license.—A license under this Act may be in the form A in the schedule to this Act, or to the like effect, or may,

if the Governor General thinks proper, be in any other form different from that given in the schedule which he may think it expedient to adopt, and contain other and different conditions.

2. **Deposit of conditions before Parliament.**—A copy of any conditions annexed to any such license, other than the conditions contained in form A shall be laid before both Houses of Parliament within twenty-one days after the making thereof, if Parliament be then in session, or if not, then within fourteen days after the commencement of the next session of Parliament. 62-63 V., c. 49, s. 4.

REVOCATION AND FORFEITURE.

5. Forfeiture of license.—If any holder of a license under this Act is convicted of any indictable offence his license shall be forthwith forfeited. 62-63 V., c. 49, s. 5.

6. Convicting justice to forward certificate in form B to Secretary of State.—When any holder of a license under this Act is convicted of an offence punishable on summary conviction under this or any other Act, the justice or justices convicting the prisoner shall forthwith forward by post a certificate in the form B in the shedule to this Act to the Secretary of State, and thereupon the license of the said holder may be revoked in manner aforesaid. 62-63 V., c. 49, s. 9.

7. Action upon forfeiture.—If any such license is revoked or forfeited, it shall be lawful for the Governor General by warrant under the hand and seal of the Secretary of State to signify to the Commissioner of Dominion Police at Ottawa that such license has been revoked or forfeited, and to require the Commissioner to issue his warrant under his hand and seal for the apprehension of the convict, to whom such license was granted, and the Commissioner shall issue his warrant accordingly.

2. **Execution of warrant of police commissioner.**—Such warrant shall and may be executed by the constable to whom the same is given for that purpose in any part of Canada, and shall have the same force and effect in all parts of Canada as if the same had been originally issued or subsequently endorsed by a justice or other lawful authority having jurisdiction in the place where the same is executed.

3. **Bringing of licensed convict before justice of the peace.—Proviso.**—Any holder of a license apprehended under such warrant, shall be brought as soon as conveniently may be

before a justice of the peace of the county in which the warrant is executed, and such justice shall thereupon make out his warrant under his hand and seal for the recommitment of such convict to the penitentiary, gaol or other public or reformatory prison from which he was released by virtue of the said license, and such convict shall be so recommitted accordingly, and shall thereupon be remitted to his original sentence, and shall undergo the residue of such sentence which remained unexpired at the time his license was granted: Provided that if the place where such convict is apprehended is not within the province, territory or district to which such penitentiary, gaol or other public or reformatory prison belongs, such convict shall be committed to the penitentiary, gaol, or other public or reformatory prison for the province, territory or district, within which he is so apprehended, and shall there undergo the residue of his sentence as aforesaid. 62-63 V., c. 49, s. 3.

R. v. Johnson, 37 C. L. J., 292.

8. **Convict whose license is forfeited to undergo term of imprisonment for the time of sentence unexpired.**—When any such license is forfeited by a conviction of an indictable offence or other conviction, or is revoked in pursuance of a summary conviction or otherwise, the person whose license is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for any offence in consequence of which his license is forfeited or revoked, further undergo a term of imprisonment equal to the portion of the term to which he was originally sentenced and which remained unexpired at the time his license was granted.

2. **Confinement in a penitentiary.**—If the original sentence in respect of which the license was granted was to a penitentiary, the convict shall for the purpose of serving the term equal to the residue of such original sentence be removed from the gaol or other place of confinement in which he is, if it be not a penitentiary, to a penitentiary by warrant under the hand and seal of any justice having jurisdiction at the place where he is confined.

3. **Term of imprisonment.**—If he is confined in a penitentiary, he shall undergo a term of imprisonment in that penitentiary equal to the residue of the original sentence.

4. **In all respects same as original.**—In every case such convict shall be liable to be dealt with in all respects as if such term of imprisonment had formed part of his original sentence. 62-63 V., c. 49, s. 11.

REPORTING TO POLICE.

9. Notice by holder of license to police authorities as to place of abode.—Every holder of a license who is at large in Canada shall notify the place of his residence to the chief officer of police, or the sheriff of the city, town, county or district in which he resides, and shall, whenever he changes such residence within the same city, town, county or district, notify such change to the said chief officer of police or sheriff, and, whenever he is about to leave a city, town, county or district, he shall notify such his intention to the chief officer of police or sheriff of that city, town, county or district, stating the place to which he is going, also, if required, and so far as is practicable, his address at that place, and whenever he arrives in any city, town, county or district he shall forthwith notify his place of residence to the chief officer of police or the sheriff of such last mentioned city, town, county or district.

2. **Report of male holder of license to police authorities.**—Every male holder of such a license shall, once in each month, report himself at such time as may be prescribed by the chief officer of police or sheriff of the city, town, county or district in which such holder may be, either to such chief officer or sheriff himself, or to such other person as he may direct, and such report may, according as such chief officer or sheriff directs, be required to be made personally or by letter.

3. **Remittance of requirements.**—The Governor General may, by order under the hand of the Secretary of State, remit any of the requirements of this section either generally or in the case of any particular holder of a license. 62-63 V., c. 49, s. 6.

OFFENCES AND PENALTIES.

10. Failing to comply with last preceding section.—If any person to whom the last preceding section applies fails to comply with any of the requirements thereof, he shall in any such case be guilty of an offence against this Act, unless he proves to the satisfaction of the court before which he is tried, either that being on a journey he tarried no longer in the place in respect of which he is charged with failing to notify his place of residence than was reasonably necessary, or that, otherwise, he did his best to act in conformity with the law.

2. **Penalty on summary conviction.**—On summary conviction of any such offence the offender shall be liable, in the discretion of the justice, either to forfeit his license, or to imprison-

ment with or without hard labour for a term not exceeding one year. 62-63 V., c. 49, s. 6.

11. Any holder of a license who,—

(a) **Failing to produce license.**—Fails to produce the same whenever required so to do by any judge, police or other magistrate, or justice of the peace, before whom he may be brought charged with any offence, or by any peace officer in whose custody he may be, and fails to make any reasonable excuse for not producing the same; or,

(b) **Or breaking conditions of license.**—Breaks any of the other conditions of his license by an act which is not of itself punishable either upon indictment or upon summary conviction;

Penalty.—Is guilty of an offence upon summary conviction of which he shall be liable to imprisonment for three months with or without hard labour. 62-63 V., c. 49, s. 7.

12. Arrest of licensed convict without a warrant.—Any peace officer may take into custody without warrant any convict who is the holder of such a license,—

(a) whom he reasonably suspects of having committed any offence; or,

(b) if it appears to such peace officer that such convict is getting his livelihood by dishonest means;

and may take him before a justice to be dealt with according to law.

2. **Forfeiture of license.**—If it appears from the facts proved before the justice that there are reasonable grounds for believing that the convict so brought before him is getting his livelihood by dishonest means such convict shall be deemed guilty of an offence against this Act, and his license shall be forfeited.

3. **Conviction of convict brought before justice of the peace.**—Any convict so brought before a justice of the peace may be convicted of getting his livelihood by dishonest means although he has been brought before the justice on some other charge, or not in the manner provided for in this section. 62-63 V., c. 49, s. 8.

ADMINISTRATION.

13. Minister of Justice to advise.—It shall be the duty of the Minister of Justice to advise the Governor General upon all matters connected with or affecting the administration of this Act. 62-63 V., c. 49, s. 12.

SCHEDULE.

FORM A.

LICENSE.

OTTAWA, day of 19

His Excellency the Governor General is graciously pleased to grant to ,who was convicted of at the for the on the , and was then and there sentenced to imprisonment in the penitentiary, gaol or prison (*as the case may be*) for the term of , and is now confined in the , license to be at large from the day of his liberation under this order during the remaining portion of his term of imprisonment, unless the said shall before the expiration of the said term be convicted of an indictable offence within Canada, or shall be summarily convicted of an offence involving forfeiture, in which case such license will be immediately forfeited by law, or unless it shall please His Excellency sooner to revoke or alter such license.

This license is given subject to the conditions endorsed upon the same upon the breach of any of which it will be liable to be revoked, whether such breach is followed by a conviction or not.

And His Excellency hereby orders that the said be set at liberty within thirty days from the date of this order.

Given under my hand and seal at the day of 19 *Secretary of State.*

CONDITIONS.

1. The holder shall preserve his license and produce it when called upon to do so by a magistrate or a peace officer.

2. He shall abstain from any violation of the law.

3. He shall not habitually associate with notoriously bad characters, such as reputed thieves and prostitutes.

4. He shall not lead an idle and dissolute life without visible means of obtaining an honest livelihood.

If his license is forfeited or revoked in consequence of a conviction for any offence he will be liable to undergo a term

of imprisonment equal to the portion of his term of years which remained unexpired when his license was granted, viz.;—the term of years.

FORM B.

FORM OF CERTIFICATE OF CONVICTION.

I do hereby certify that A.B., the holder of a license under the Ticket of Leave Act was on the day of in the year duly convicted by and before of the offence of and sentenced to J.P., Co.

CHAPTER 153

An Act respecting the Lord's Day

SHORT TITLE.

1 Short title.—This Act may be cited as the Lord's Day Act.

Held by the Supreme Court of Canada that legislation to prohibit on Sunday the performance of work and labour, transaction of business, engaging in sport for gain or keeping open places of entertainment is within the jurisdiction of the Parliament of Canada.
Re Sunday Legislation (1905), 35 S. C. R., 581.
This decision followed:—
Atty.-General for Ontario v. Hamilton Street Ry. Co. (1903), A. C., 524.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) '**Lord's Day.**'—'Lord's Day' means the period of time which begins at twelve o'clock on Saturday afternoon and ends at twelve o'clock on the following afternoon;

(b) '**Person.**'—'Person' has the meaning which it has in the Criminal Code;

(c) '**Vessel.**'—Includes any kind of vessel or boat used for conveying passengers or freight by water;

(d) '**Railway.**'—'Railway' includes steam railway, electric railway, street railway and tramway;

(e) '**Performance.**'—'Performance' includes any game, match, sport, contest, exhibition or entertainment;

(f) '**Employer.**'—'Employer' includes every person to whose orders or directions any other person is by his employment bound to conform;

(g) '**Provincial Act.**'—'Provincial Act' means the charter of any municipality, or any public Act of any province, whether passed before or since Confederation. 6 E. VII., c. 27, s. 1.

3. Dominion railways.—Nothing herein shall prevent the operation on the Lord's Day for passenger traffic by any railway company incorporated by or subject to the legislative authority of the Parliament of Canada of its railway where such operation is not otherwise prohibited.

2. **Operation of provincial railways.**—Nothing herein shall prevent the operation on the Lord's Day for passenger traffic of any railway subject to the legislative authority of any province, unless such railway is prohibited by provincial authority from so operating. 6 E. VII., c. 27, s. 13.

COMMENCEMENT.

4. Commencement of Act.—This Act shall come into force on the first day of March, one thousand nine hundred and seven. 6 E. VII., c. 27, s. 16.

PROHIBITIONS.

5. No sales to be made or business or work done on Lord's Day.—It shall not be lawful for any person on the Lord's Day, except as provided herein, or in any provincial Act or law now or hereafter in force, to sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or for gain to do, or employ any other person to do, on that day, any work, business, or labour. 6 E. VII., c. 27, s. 2.

6. Substitution of another holiday for the Lord's Day.—Except in cases of emergency, it shall not be lawful for any person to require any employee engaged in any work of receiving, transmitting or delivering telegraph or telephone messages, or in the work of any industrial process, or in connection with transportation, to do on the Lord's Day the usual work of his ordinary calling, unless such employee is allowed during the next six days of such week, twenty-four consecutive hours without labour.

2. **Restriction.**—This section shall not apply to any employee engaged in the work of any industrial process in which the regular day's labour of such employee is not of more than eight hours' duration. 6 E. VII., c. 27, s. 4.

7. Games and performances where admission fee is charged.—It shall not be lawful for any person, on the Lord's Day, except as provided in any provincial Act or law now or here-

after in force, to engage in any public game or contest for gain, or for any prize or reward, or to be present thereat, or to provide, engage in, or be present at any performance or public meeting, elsewhere than in a church, at which any fee is charged, directly or indirectly, either for admission to such performance or meeting, or to any place within which the same is provided, or for any service or privilege thereat.

2. **Charges for conveyance to performance.**—When any performance at which an admission fee or any other fee is so charged is provided in any building or place to which persons are conveyed for hire by the proprietors or managers of such performance or by any one acting as their agent or under their control, the charge for such conveyance shall be deemed an indirect payment of such fee within the meaning of this section. 6 E. VII., c. 27, s. 5.

8. **Excursions by conveyances where fee is charged.**—It shall not be lawful for any person on the Lord's Day, except as provided by any provincial Act or law now or hereafter in force, to run, conduct, or convey by any mode of conveyance any excursion on which passengers are conveyed for hire, and having for its principal or only object the carriage on that day of such passengers for amusement or pleasure, and passengers so conveyed shall not be deemed to be travellers within the meaning of this Act. 6 E. VII., c. 27, s. 6.

9. **Advertisements of prohibited performances, etc., wherever taking place.**—It shall not be lawful for any person to advertise in any manner whatsoever any performance or other thing prohibited by this Act.

2. It shall not be lawful for any person to advertise in Canada in any manner whatsoever any performance or other thing which if given or done in Canada would be a violation of this Act. 6 E. VII., c. 27, s. 7.

10. **Shooting.**—It shall not be lawful for any person on the Lord's Day to shoot with or use any gun, rifle or other similar engine, either for gain, or in such a manner or in such places as to disturb other persons in attendance at public worship or in the observance of that day. 6 E. VII., c. 27, s. 8.

11. **Sale of foreign newspapers on Sunday.**—It shall not be lawful for any person to bring into Canada for sale or distribution, or to sell or distribute within Canada, on the Lord's Day, any foreign newspaper or publication classified as a newspaper. 6 E. VII., c. 27, s. 9.

WORKS OF NECESSITY AND MERCY EXCEPTED.

12. Works of necessity and mercy not prohibited.—Notwithstanding anything herein contained, any person may on the Lord's Day do any work of necessity or mercy, and for greater certainty, but not so as to restrict the ordinary meaning of the expression 'work of necessity or mercy,' it is hereby declared that it shall be deemed to include the following classes of work:—

(a) **Divine worship.**—Any necessary or customary work in connection with divine worship;

(b) **Relief of sickness.**—Work for the relief of sickness and suffering, including the sale of drugs, medicines and surgical appliances by retail;

(c) **Telegraph and telephone.**—Receiving, transmitting, or delivering telegraph or telephone messages;

(d) **Fires and repairs to any continuous industry.**—Starting or maintaining fires, making repairs to furnaces and repairs in cases of emergency, and doing any other work, when such fires, repairs or work are essential to any industry or industrial process of such a continuous nature that it cannot be stopped without serious injury to such industry, or its product, or to the plant or property used in such process;

(e) **Fires, pumping, etc., in protection of life and property.**—Starting or maintaining fires, and ventilating, pumping out and inspecting mines, when any such work is essential to the protection of property, life or health;

(f) **Continuous supply of light, heat, etc.**—Any work without the doing of which on the Lord's Day, electric current, light, heat, cold air, water or gas cannot be continuously supplied for lawful purposes;

(g) **Conveying travellers.**—The conveying of travellers and work incidental thereto;

(h) **Trains and vessels in transit.**—The continuance to their destination of trains and vessels in transit when the Lord's Day begins, and work incidental thereto;

(i) **Loading and unloading goods.**—Loading and unloading merchandise, at intermediate points, on or from passenger boats or passenger trains;

(j) **Clearing snow and ice, repairs, etc., in case of railways.**—Keeping railway tracks clear of snow or ice, making repairs in cases of emergency, or doing any other work of a like incidental character necessary to keep the lines and tracks open on the Lord's Day;

(k) **Work in railway yards.**—Work before six o'clock in the forenoon and after eight o'clock in the afternoon of yards crews in handling cars in railway yards;

(l) **Loading and unloading vessels.**—Loading, unloading and operating any ocean-going vessel which otherwise would be unduly delayed after her scheduled time of sailing, or any vessel which otherwise would be in imminent danger of being stopped by the closing of navigation; or loading or unloading before seven o'clock in the morning or after eight o'clock in the afternoon any grain, coal or ore carrying vessel after the fifteenth of September;

(m) **Milk, cheese and live animals.**—The caring for milk, cheese, and live animals, and the unloading of and caring for perishable products and live animals, arriving at any point during the Lord's Day;

(n) **Working bridges and ferries.**—The operation of any toll or drawbridge, or any ferry or boat authorized by competent authority to carry passengers on the Lord's Day;

(o) **Hiring horses and boats.**—The hiring of horses and carriages or small boats for the personal use of the hirer or his family for any purpose not prohibited by this Act;

(p) **Newspapers.**—Any unavoidable work after six o'clock in the afternoon of the Lord's Day, in the preparation of the regular Monday morning edition of a daily newspaper;

(q) **Mail carrying.**—The conveying His Majesty's mails and work incidental thereto;

(r) **Milk delivery.**—The delivery of milk for domestic use, and the work of domestic servants and watchmen;

(s) **Street railways.**—The operation by any Canadian electric street railway company, whose line is interprovincial or international, of its cars, for passenger traffic, on the Lord's Day, on any line or branch which is, on the day of the coming into force of this Act, regularly so operated;

(t) **Public officers.**—Work done by any person in the public service of His Majesty while acting therein under any regulation or direction of any department of the Government;

(u) **Fishermen.**—Any unavoidable work by fishermen after six o'clock in the afternoon of the Lord's Day, in the taking of fish;

(v) **Maple sugar.**—All operations connected with the making of maple sugar and maple syrup in the maple grove;

(w) **Saving property.**—Any unavoidable work on the Lord's Day to save property in cases of emergency, or where such property is in imminent danger of destruction or serious injury;

(x) **Work permitted by Railway commissioners.**—Any work which the Board of Railway Commissioners for Canada, having regard to the object of this Act, and with the object of preventing undue delay, deems necessary to permit in connection with the freight traffic of any railway. 6 E. VII., c. 27, s. 3.

OFFENCES AND PENALTIES.

13. Violation of this Act.—Penalty.—Any person who violates any of the provisions of this Act shall for each offence be liable, on summary conviction, to a fine, not less than one dollar and not exceeding forty dollars, together with the cost of prosecution. 6 E. VII., c. 27, s. 10.

14. Employer authorizing.—Penalty.—Every employer who authorizes or directs anything to be done in violation of any provision of this Act, shall for each offence be liable, on summary conviction, to a fine not exceeding one hundred dollars and not less than twenty dollars, in addition to any other penalty prescribed by law for the same offence. 6 E. VII., c. 27, s. 11.

15. Corporation directing or permitting violation of this Act.—Penalty.—Every corporation which authorizes, directs or permits its employees to carry on any part of the business of such corporation in violation of any of the provisions of this Act, shall be liable, on summary conviction before two justices of the peace, for the first offence, to a penalty not exceeding two hundred and fifty dollars and not less than fifty dollars, and, for each subsequent offence, to a penalty not exceeding five hundred dollars and not less than one hundred dollars, in addition to any other penalty prescribed by law for the same offence. 6 E. VII., c. 27, s. 12.

PROCEDURE.

16. Provincial Lord's Day Acts not affected.—Nothing herein shall be construed to repeal or in any way affect any provisions of any Act or law relating in any way to the observance of the Lord's Day in force in any province of Canada when this Act comes into force; and where any person violates any of the provisions of this Act, and such offence is also a violation of any other Act or law, the offender may be proceeded against either under the provisions of this Act or under the provisions of any other Act or law applicable to the offence charged. 6 E. VII., c. 27, s. 14.

17. Limitation of action.—No action or prosecution for a violation of this Act shall be commenced without the leave of the Attorney General for the province in which the offence is alleged to have been committed, nor after the expiration of sixty days from the time of the commission of the alleged offence. 6 E. VII., c. 27, s. 15.

CHAPTER 154

An Act respecting Fugitive Offenders in Canada from other parts of His Majesty's Dominions

SHORT TITLE.

1. Short title.—This Act may be cited as the Fugitive Offenders Act. R.S., c. 143, s. 1.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) '**Magistrate**'.—'Magistrate' means any justice of the peace or any person having authority to issue a warrant for the apprehension of persons accused of offences, and to commit such persons for trial;

(b) '**Deposition**'.—'Deposition' includes every affidavit, affirmation, or statement made upon oath;

(c) '**Court**'.—'Court' means,

in the province of Ontario, the High Court of Justice,

in the province of Quebec, the Superior Court,

in the province of Nova Scotia, New Brunswick, Prince Edward Island or British Columbia, respectively, the Supreme Court for the province,

in the province of Manitoba, the Court of King's Bench,

in the province of Saskatchewan or Alberta, a judge of the Supreme Court of the Northwest Territories, pending the abolition of that Court by the legislature of the province, and, after the abolition of the said Court, a judge of such superior court as is established by the legislature of the province in lieu of the Supreme Court of the Northwest Territories,

in the Northwest Territories, such court, or magistrate, or other judicial authority as is designated from time to time by proclamation of the Governor in Council published in the *Canada Gazette*.

in the Yukon Territory, the Territorial Court, or a court, magistrate or other judicial authority designated as aforesaid:

(d) '**Fugitive**'.—'Fugitive' means a person accused of having committed an offence to which this Act applies in any part of His Majesty's dominions, except Canada, and who has left that part. R.S., c. 143, ss. 2 and 4; 62-63 V., c. 11, s. 6.

APPLICATION.

3. To what offences this Act applies.—This Act shall apply to treason and to piracy, and to every offence, whether called felony, misdemeanour, crime or by any other name, which is, for the time being, punishable in the part of His Majesty's dominion in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of twelve months or more, or by any greater punishment; and, for the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour. R.S., c. 143, s. 3.

4. Application to acts not offences by Canadian law.—This Act shall apply to every such offence, notwithstanding that, by the law of Canada, it is not an offence or not an offence punishable in manner aforesaid; and all the provisions of this Act, including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in Canada an offence to which this Act applies. R.S., c. 143, s. 3.

5. Application to persons unlawfully at large after conviction.—This Act shall apply, so far as is consistent with the tenor thereof, to every person convicted by a court in any part of His Majesty's dominions of an offence committed either in His Majesty's dominions or elsewhere who is unlawfully at large before the expiration of his sentence, in like manner as it applies to a person accused of the like offence committed in the part of His Majesty's dominions in which such person was convicted. R.S., c. 143, s. 3.

6. As to offences committed before the commencement of this Act.—This Act shall apply in respect to offences committed before the commencement of this Act, in like manner as if such offences were committed after such commencement. R.S., c. 143, s. 3.

PROCEDURE.

7. Apprehension and return of fugitive offenders.—Any fugitive, if found in Canada, shall be liable to be apprehended and returned, in the manner provided by this Act, to the part of His Majesty's dominions from which he is a fugitive.

2. **Warrant.**—A fugitive may be so apprehended under an endorsed warrant or a provisional warrant. R.S., c. 143, s. 4.

8. Proceedings in Canada on warrant issued elsewhere.—Whenever a warrant has been issued in a part of His Majesty's dominions for the apprehension of a fugitive from that part who is or is suspected to be in or on the way to Canada, the Governor General or a judge of a court, if satisfied that the warrant was issued by some person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend the fugitive in Canada and bring him before a magistrate. R.S., c. 143, s. 5.

9. Issue of provisional warrant.—A magistrate in Canada may issue a provisional warrant for the apprehension of a fugitive who is or is suspected of being in or on his way to Canada, on such information and under such circumstances as would, in his opinion, justify the issue of a warrant, if the offence of which the fugitive is accused had been committed within his jurisdiction; and such warrant may be backed and executed accordingly. R.S., c. 143, s. 6.

10. Report to Governor General.—A magistrate issuing a provisional warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, to the Governor General; and the Governor General may, if he thinks fit, discharge the person apprehended under such warrant. R.S., c. 143, s. 6.

11. Fugitive to be brought before a magistrate.—A fugitive, when apprehended, shall be brought before a magistrate, who, subject to the provisions of this Act, shall hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, including the power to remand and admit to bail, as if the fugitive was charged with an offence committed within his jurisdiction. R.S., c. 143, s. 7.

12. Committal of fugitive.—Report to Governor General.—If the endorsed warrant for the apprehension of the fugitive is duly authenticated, and such evidence is produced as, subject to the provisions of this Act, according to the law ordinarily administered by the magistrate, raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, and that the offence is one to which this Act applies, the magistrate shall commit the fugitive to prison to await his return, and shall forthwith send a certificate of the committal and such report of the case, as he thinks fit, to the Governor General. R.S., c. 143, s. 7.

13. Magistrate to inform fugitive as to his rights.—Whenever the magistrate commits the fugitive to prison, he shall inform the fugitive that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus* or other like process. R.S., c. 143, s. 7.

14. Remand of fugitive.—A fugitive apprehended on a provisional warrant may, from time to time, be remanded for such reasonable time, not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant. R.S., c. 143, s. 7.

15. Order for the return of fugitive.—Warrant.—Upon the expiration of fifteen days, after a fugitive has been committed to prison to await his return, or if a writ of *habeas corpus* or other like process is issued by a court, with reference to such fugitive, after the final decision of the court in the case, if the fugitive is not discharged by the court, the Governor General, by warrant under his hand, if he thinks it just, may order the fugitive to be returned to the part of His Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or some one or more of them, and to be held in custody, and conveyed to the said part of His Majesty's dominions, to be dealt with there, in due course of law, as if he had been there apprehended.

2. **Execution of warrant.**—Such warrant shall be forthwith executed according to the tenor thereof. R.S., c. 143, s. 8.

16. Court may discharge fugitive, if not returned within a certain time.—If a fugitive who, in pursuance of this Act., has been committed to prison in Canada to await his return, is not conveyed out of Canada within two months after such com-

mittal, the court, upon application by or on behalf of the fugitive, and upon proof that reasonable notice of the intention to make such application has been given to the Governor General, may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody. R.S., c. 143, s. 9.

17. Court may discharge fugitive in trivial cases.—Whenever it is made to appear to the court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith, in the interests of justice, or that, for any other reason, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, the court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises, as to the court seems just. R.S., c. 143, s. 10.

18. Fugitive undergoing sentence.—A fugitive who has been accused of an offence within Canadian jurisdiction, not being the offence for which his surrender is asked, or who is undergoing sentence under a conviction in Canada, shall not be surrendered until after he has been discharged, whether by acquittal or by expiration of his sentence, or otherwise. R.S., c. 143, s. 11.

19. Search warrant may be granted.—Whenever a warrant, for the apprehension of a person accused of an offence, has been endorsed in pursuance of this Act, in Canada, any magistrate in Canada shall have the same power of issuing a warrant to search for any property alleged to have been stolen or to have been otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such magistrate. R.S., c. 143, s. 12.

20. Exercise of judicial powers.—Any judge of the court may, either in term time or vacation, exercise in chambers, all the powers conferred by this Act upon the court. R.S., c. 143, s. 13.

21. Effect of endorsement of warrant.—An endorsement of a warrant in pursuance of this Act shall be signed by the authority endorsing the same, and shall authorize all or any of the

persons named in the endorsement, and of the persons to whom the warrant was originally directed, and also every constable, to execute the warrant within Canada by apprehending the person named in it, and bringing him before a magistrate in Canada, whether he is the magistrate named in the endorsement or some other.

2. **As to death of signer or endorser.**—Every warrant, summons, subpœna and process, and every endorsement made in pursuance of this Act thereon, shall, for the purposes of this Act, remain in force, notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office. R.S., c. 143, s. 14.

RETURN OF FUGITIVE.

22. How the fugitive may be returned.—Whenever a fugitive or prisoner is authorized to be returned to any part of His Majesty's dominions in pursuance of this Act, such fugitive or prisoner may be sent thither in any ship registered in Canada or belonging to the Government of Canada. R.S., c. 143, s. 15.

23. Order to master of Canadian ship to convey fugitive.—Proviso.—The Governor General, may, by the warrant for the return of the fugitive, order the master of any ship registered in Canada, bound to the said part of His Majesty's dominions, to receive such fugitive or prisoner, and afford a passage and subsistence during the voyage to him, and to the person having him in custody, and to the witnesses; but such master shall not be required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage. R.S., c. 143, s. 15.

24. Endorsement upon agreement of the ship.—The Governor General shall cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her, as the Minister of Marine and Fisheries, from time to time, requires. R.S., c. 143, s. 15.

25. Duty of master on arrival at destination.—Every such master shall, on his ship's arrival in the said part of His Majesty's dominions, cause such fugitive or prisoner, if he is not in the custody of any person, to be given into the custody of some constable there, to be dealt with according to law. R.S., c. 143, s. 15.

26. Penalty for non-compliance.—Every master who fails, on payment or tender of a reasonable amount for expenses, to comply with an order made in pursuance of this Act, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this Act, shall be liable, on summary conviction, to a penalty not exceeding two hundred dollars. R.S., c. 143, s. 15.

EVIDENCE.

27. Depositions.—A magistrate may take depositions for the purposes of this Act, in the absence of a person accused of an offence, in like manner as he might take the same if such person was present and accused of the offence before him. R.S., c. 143, s. 16.

28. Their use in evidence.—Depositions whether taken in the absence of the fugitive or otherwise and copies thereof, and official certificates of, or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act. R.S., c. 143, s. 17.

29. Authentication of warrants and other documents.—Warrants and depositions, and copies thereof, and official certificates of facts, or judicial documents stating facts, shall be deemed duly authenticated for the purposes of this Act if they are authenticated in manner provided for the time being by law, or if they purport to be sigend by or authenticated by the signature of a judge, magistrate or officer of the part of His Majesty's dominions in which the same are issued, taken or made, and are authenticated either by the oath of some witness, or by being sealed with the official seal of a secretary of state, or with the public seal of a British possession, or with the official seal of a governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession.

2. **Seal to be evidence.**—All courts and magistrates shall take judicial notice of every such seal, and shall admit in evidence without further proof the documents authenticated by it. R.S., c. 143, s. 18.

CHAPTER 155

An Act respecting the Extradition of Fugitive Criminals.

SHORT TITLE.

1. Short title.—This Act may be cited as the Extradition Act. R.S., c. 142, s. 1.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) '**Extradition arrangement.**'—'Extradition arrangement', or 'arrangement' means a treaty, convention or arrangement made by His Majesty with a foreign state for the surrender of fugitive criminals and which extends to Canada;

(b) '**Extradition crime**'.—'Extradition crime' may mean any crime which, if committed in Canada, or within Canadian jurisdiction, would be one of the crimes described in the first schedule to this Act; and, in the application of this Act to the case of any extradition arrangement, the said expression means any crime described in such arrangement, whether comprised in the said schedule or not;

(c) '**Conviction**'.—'**Convicted.**'—'Conviction' or 'convicted' does not include the case of a condemnation under foreign law by reason of contumacy; but 'accused person' includes a person so condemned;

(d) '**Fugitive**'—'**Fugitive criminal.**'—'Fugitive' or 'fugitive criminal' means a person being or suspected of being in Canada, who is accused or convicted of an extradition crime committed within the jurisdiction of any foreign state;

(e) '**Foreign state**'.—'Foreign state' includes every colony, dependency and constituent part of the foreign state; and every vessel of any such state shall be deemed to be within the jurisdiction of and to be part of the state;

(f) '**Warrant**.'—'Warrant' in the case of a foreign state, includes any judicial document authorizing the arrest of a person accused or convicted of crime;

(g) '**Judge**'.—'Judge' includes any person authorized to act judicially in extradition matters. R.S., c. 142, s. 2.

See Ex parte Phelan (1883), 6 L. N., 261; Re Martin (1896), 33 C.L.J., 253.

PART I.

EXTRADITION UNDER TREATY.

Application of Part.

3. As to existing arrangements.—In the case of any foreign state with which there is an extradition arrangement, this Part shall apply during the continuance of such arrangement; but no provision of this Part, which is inconsistent with any of the terms of the arrangement, shall have effect to contravene the arrangement; and this Part shall be so read and construed as to provide for the execution of the arrangement. R.S., c. 142, s. 3.

See Re Rosenbaum (1874), 18 C. L. J., 200; Ex parte Phelan (1883), 6 L. N., 261; The People of the U. S. v. Debaum (1888), 16 R. L., 612. As to extradition with the U. S., see notes in 2 C. C. C., 71 and 5 C. C. C., 553; Re Collins (1905), 10 C. C. C., 70.

4. As to limitations, qualifications and exceptions Imp. Act 33-34 V., c. 52 and amendments.—In the case of any foreign state with respect to which the application to the United Kingdom of the Act of the Parliament of the United Kingdom, passed in the year one thousand eight hundred and seventy, and intituled *An Act for amending the Law relating to the Extradition of Criminals*, and any Act or Acts amending the same, is made subject to any limitation, condition, qualification or exception, the Governor in Council shall make the application of this Part, subject to such limitation, condition, qualification or exception. R.S., c. 142, s. 3.

See note to preceding section.

5. Orders under this Part may be revoked.—The Governor in Council may, at any time, revoke or alter, subject to the restrictions of this Part, any order made by him in council under this Part, and all the provisions of this Part with respect to the

original order shall, so far as applicable, apply *mutatis mutandis* to the new order. R.S., c. 142, s. 3.

6. If the application of this Part depends on an order in council.—This Part, so far as its application in the case of any foreign state, depends on or is affected by any order in council, made under this Part or referred to therein, shall apply, or its application shall be affected from and after the time specified in the order, or, if no time is specified, after the date of the publication of the order in the *Canada Gazette*. R.S., c. 142, s. 4.

7. Publication of orders in council required.—Any order of His Majesty in Council, referred to in this Part, and any order of the Governor in Council made under this Part, and any extradition arrangement shall be, as soon as possible, published in the *Canada Gazette* and laid before both Houses of Parliament. R.S., c. 142, s. 4.

8. Effect of publication in Canada Gazette.—The publication in the *Canada Gazette* of an extradition arrangement, or an order in council, shall be evidence of such arrangement or order, and of the terms thereof, and of the application of this Part, pursuant and subject thereto; and the court or judge shall take judicial notice, without proof, of such arrangement or order, and the validity of the order and the application of this Part, pursuant and subject thereto, shall not be questioned. R.S., c. 142, s. 4.

JUDGES AND COMMISSIONERS.

9. What judges may act in cases under this Part.—All judges of the superior courts and of the county courts of any province, and all commissioners who are, from time to time, appointed for the purpose, in any province by the Governor in Council, under the Great Seal of Canada, by virtue of this Part, are authorized to act judicially in extradition matters under this Part, within the province; and every such person shall, for the purposes of this Part, have all the powers and jurisdiction of any judge or magistrate of the province.

2. Nothing in this section shall be construed to confer on any judge any jurisdiction in *habeas corpus* matters. R.S., c. 142, s. 5.

In re Garbutt (1891), 21 O. R., 179; In re Parker (1891), 19 O. R., 612; Ex parte Seitz (1899), 3 C. C. C., 54; Re Stern (1903), 7 C. C. C., 191; Ex parte Gaynor & Greene (1902), 7 C. C. C., 375; 9 C. C. C., 240, 255, 486; 10 C. C. C., 21 (overruling 9 C. C. C., 492).

10. On what grounds a warrant may issue.—Whenever this Part applies, a judge may issue his warrant for the apprehension of a fugitive on a foreign warrant of arrest, or an information or complaint laid before him, and on such evidence or after such proceedings as in his opinion would, subject to the provisions of this Part, justify the issue of his warrant if the crime of which the fugitive is accused, or of which he is alleged to have been convicted, had been committed in Canada.

2. **Report to Minister of Justice.**—The judge shall forthwith send a report of the fact of the issue of the warrant, together with certified copies of the evidence and foreign warrant, information or complaint, to the Minister of Justice. R.S., c. 142, s. 6.

In re Burley (1865), 1 L. J. N. S., 34; Re Caldwell, 5 Ont. P. R., 217; Re Garbutt (1891), 21 O. R., 179, 465; Re Lazier (1899), 35 C. L. J., 171; Re Worms (1876), 7 R. L., 319; Re Hoke (1887), 15 R. L., 92; Ex parte Lamirande (1866), 10 R. L., 280; Re Lee, 5 O. R., 583; Re Levi (1897), 1 C. C. C., 74; Re Murphy (1895), 2 C. C. C., 578; R. v. Watts (1902), 5 C. C. C., 246; Re Kelly (1902), 5 C. C. C., 541; Re Bongard (1900), 6 C. C. C., 74; Re Cohen (1904), 8 C. C. C., 312; Re Martin (1897), 8 C. C. C., 326; Re Dickey (1904), 8 C. C. C., 321; Re Lorenz (1905), 9 C. C. C., 158; Re Lewis (1904), 9 C. C. C., 233; Re Gaynor & Greene (1905), 9 C. C. C., 205; Re Collins (1905), 10 C. C. C., 73, 80; Re Gaynor & Greene (1905), 10 C. C. C., 154; Re Harsha (1906), 10 C. C. C., 433 and 11 C. C. C., 62; U. S. v. Browne (1906), 11 C. C. C., 167.

11. Execution of warrant.—A warrant issued under this Part may be executed in any part of Canada, in the same manner as if it had been originally issued, or subsequently endorsed, by a justice of the peace having jurisdiction in the place where it is executed. R.S., c. 142, s. 7.

Ex parte Seitz (1899), 3 C. C. C., 54; Re Dickey (1904), 8 C. C. C., 321.

12. Surrender not to depend on time when offence was committed, etc.—Every fugitive criminal of a foreign state, to which this Part applies, shall be liable to be apprehended, committed and surrendered in the manner provided in this Part, whether the crime or conviction, in respect of which the surrender is sought, was committed or took place before or after the date of the arrangement, or before or after the time when this Part is made to apply to such state, and whether there is or is not any criminal jurisdiction in any court of His Majesty's dominions over the fugitive in respect of the crime. R.S., c. 142, s. 8.

13. Fugitive to be brought before judge.—The fugitive shall be brought before a judge, who shall, subject to the provi-

sions of this Part, hear the case, in the same manner, as nearly as may be, as if the fugitive was brought before a justice of the peace, charged with an indictable offence committed in Canada. R.S., c. 142, s. 9.

Greene v. Vallee, R. J. Q., 14 K. B., 261; Ex parte Debaum, 16 R. L., 612; In re Phipps, 8 Ont. A. R., 77; In re Gaynor & Greene, R. J. Q., 22 S. C., 91; U. S. v. Gaynor (1905), A. C., 128.

14. Evidence of charge.—The judge shall receive upon oath, or affirmation, if affirmation is allowed by law, the evidence of any witness tendered to show the truth of the charge or the fact of the conviction. R.S., c. 142, s. 9.

United States v. Browne (1906), 11 C. C. C., 161, 167.

15. Evidence that crime is not an extradition crime.—The judge shall receive, in like manner, any evidence tendered to show that the crime of which the fugitive is accused or alleged to have been convicted is an offence of a political character, or is, for any other reason, not an extradition crime; or that the proceedings are being taken with a view to prosecute or punish him for an offence of a political character. R.S., c. 142, s. 9.

Re Levi (1897), 1 C. C. C., 74; U. S. v. Browne (1906), 11 C. C. C., 167.

16. Depositions taken out of Canada.—Depositions or statements taken in a foreign state on oath, or on affirmation, where affirmation is allowed by the law of the state, and copies of such depositions or statements and foreign certificates of, or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Part. R.S., c. 142, s. 10.

In re Rosenbaum (1874), 18 C. L. J., 200; In re Worms (1876), 7 R. L., 319; R. v. Browne (1881), 31 C. P., 484 and 6 Ont. A. R., 386; Ex parte Phelan (1883), 6 L. N., 261; In re Lee (1884), 5 O. R., 583; In re Hoke (1887), 15 R. L., 92; U. S. v. Debaum (1888), 16 R. L., 92; In re Weir (1889), 14 O. R., 389; Re Garbutt (1891), 21 O. R., 179; Re Ickerman (1898), 2 C. C. C., 262; Re Cohen (1904), 8 C. C. C., 251; U. S. v. Browne (1906), 11 C. C. C., 167.

17. When to be deemed authenticated.—Such papers shall be deemed duly authenticated if authenticated in manner provided, for the time being, by law, or if,—

(a) the warrant purports to be signed by, or the certificate purports to be certified by, or the depositions or statements, or the copies thereof, purport to be certified to be the originals or true copies, by a judge, magistrate or officer of the foreign state; and,

(b) if the papers are authenticated by the oath or affirmation of some witness, or by being sealed with the official seal of the Minister of Justice, or some other minister of the foreign state or of a colony, dependency or constituent part of the foreign state; of which seal the judge shall take judicial notice without proof. R.S., c. 142, s. 10.

In re Lee (1884), 5 O. R., 583; In re Weir (1889), 14 O. R., 389; In re Hoke (1887), 15 R. L., 92; Re Lewis (1904), 9 C. C. C., 233.

18. (a) **What evidence shall be sufficient to justify committal.**—In the case of a fugitive alleged to have been convicted of an extradition crime, if such evidence is produced as would, according to the law of Canada, subject to the provisions of this Part, prove that he was so convicted; and,
if such evidence is produced as would, according to the law of Canada, subject to the provisions of this Part, justify his committal for trial, if the crime had been committed in Canada;
the judge shall issue his warrant for the committal of the fugitive to the nearest convenient prison, there to remain until surrendered to the foreign state, or discharged according to law.

2. **Discharge.**—If such evidence is not produced, the judge shall order him to be discharged. R.S., c. 142, s. 11.

In re Burley (1865), 1 L. J. N. S., 34; Ex parte Brown (1866), 2 L. C. L. J., 23; Ex parte Lamirande (1866), 10 L. C. J., 280; R. v. Gould (1869), 20 C. P., 154; Ex parte Worms (1876), 22 L. C. J., 109; Ex parte Zink (1880), 6 Q. L. R., 260; In re Hoke (1887), 14 R. L., 705 and 15 R. L.; Re Murphy (1894), 2 C. C. C., 562, 578; Exparte Lanctot (1896), R. J. Q., 5 Q. B., 422; Ex parte Feinberg (1901), 4 C. C. C., 270; Re Watts (1902), 5 C. C. C., 538; Re Collins (1905), 10 C. C. C., 80; Re Latimer (1906), 10 C. C. C., 244; Re Harsha (1906), 11 C. C. C., 62; Re Johnston (1907), 12 C. C. C., 559.

19. Judge shall give certain information to fugitives.—If the judge commits a fugitive to prison, he shall, on such committal,—

(a) inform him that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus*; and,

(b) **Transmit evidence to Minister of Justice.**—Transmit

(b) in the case of a fugitive accused of an extradition crime, 142, s. 12.
to the Minister of Justice a certificate of the committal, with a copy of all the evidence taken before him not already so transmitted, and such report upon the case as he thinks fit. R.S., c.

Re Pennsylvania v. Levi (1897), R. J. Q., 6 Q. B., 151; In re Lazier (1899), 29 S. C. R., 630; Ex parte Seitz (1899), 3 C. C. C., 54; Re Gates (1904), 8 C. C. C., 249; Re Lewis (1904), 9 C. C. C., 233.

20. By whom requisition for surrender may be made.—A requisition for the surrender of a fugitive criminal of a foreign state who is, or is suspected to be in Canada, may be made to the Minister of Justice,—

(a) by any person recognized by him as a consular officer of that state resident at Ottawa; or,

(b) by any minister of that state communicating with the Minister of Justice through the diplomatic representative of His Majesty in that state.

2. **By arrangement.**—If neither of these modes is convenient, then the requisition shall be made in such other mode as is settled by arrangement. R.S., c. 142, s. 13.

Ex parte Lamirande (1866), 10 L. C. J., 280; Re Lazier (1899), 3 C. C. C., 167.

21. When the fugitive shall not be liable to surrender.—No fugitive shall be liable to surrender under this Part if it appears,—

(a) that the offence in respect of which proceedings are taken under this Act is one of a political character; or,

(b) that such proceedings are being taken with a view to prosecute or punish him for an offence of a political character. R.S., c. 142, s. 14.

In re Burley (1865), 1 L. J. N. S., 34; In re Levi (1897), 1 C. C. C., 74.

22. In cases specified, Minister may refuse to make order, or may cancel order already made.—If the Minister of Justice at any time determines,—

(a) that the offence in respect of which proceedings are being taken under this Part is one of a political character;

(b) that the proceedings are, in fact, being taken with a view to try or punish the fugitive for an offence of a political character; or,

(c) that the foreign state does not intend to make a requisition for surrender;

he may refuse to make an order for surrender, and may, by order under his hand and seal, cancel any order made by him, or any warrant issued by a judge under this Part, and order the fugitive to be discharged out of custody on any committal made under this Part; and the fugitive shall be discharged accordingly. R.S., c. 142, s. 15.

23. Delay before surrender.—A fugitive shall not be surrendered until after the expiration of fifteen days from the date

of his committal for surrender; or, if a writ of *habeas corpus* is issued, until after the decision of the court remanding him. R. S., c. 142, s. 16.

In re Warner, 1 C. L. J., 16; R. v. Read, 4 Ont. P. R., 281; Ex parte Eno, 10 Q. L. R., 173; Re Gaynor & Greene (1905), 9 C. C. C., 496; Re Collins (1905), 10 C. C. C., 80; Re Bartels (1907), 13 C. C. C., 59.

24. If fugitive is an offender under Canadian law.—A fugitive who has been accused of an offence within Canadian jurisdiction, not being the offence for which his surrender is asked, or who is undergoing sentence under a conviction in Canada, shall not be surrendered until after he has been discharged, whether by acquittal or by expiration of his sentence, or otherwise. R.S., c. 142, s. 16.

25. Minister may order surrender of fugitive to officer of a foreign state.—Subject to the provisions of this Part, the Minister of Justice, upon the requisition of the foreign state, may under his hand and seal, order a fugitive who has been committed for surrender to be surrendered to the persons or persons who are, in his opinion, duly authorized to receive him in the name and on behalf of the foreign state, and he shall be so surrendered accordingly. R.S., c. 142, s. 17.

26. Powers of such officers.—Any person to whom such order of the Minister of Justice is directed may deliver, and the person thereto authorized by such order may receive, hold in custody, and convey the fugitive within the jurisdiction of the foreign state; and if he escapes out of any custody to which he is delivered, on or in pursuance of such order, he may be retaken in the same manner as any person accused or convicted of any crime against the laws of Canada may be retaken on an escape. R.S., c. 142, s. 17.

27. Property found on fugitive.—Everything found in the possession of the fugitive at the time of his arrest, which may be material as evidence in making proof of the crime, may be delivered up with the fugitive on his surrender, subject to all rights of third persons with regard thereto. R.S., c. 142, s. 18.

28. Fugitive to be conveyed out of Canada within certain time.—If a fugitive is not surrendered and conveyed out of Canada within two months after his committal for surrender, or, if a writ of *habeas corpus* is issued, within two months after the decision of the court on such writ, over and above, in either

case, the time required to convey him from the prison to which he has been committed, by the readiest way out of Canada, any one or more of the judges of the superior courts of the province in which such person is confined, having power to grant a writ of *habeas corpus*, may, upon application made to him or them by or on behalf of the fugitive, and on proof that reasonable notice of the intention to make such application has been given to the Minister of Justice, order the fugitive to be discharged out of custody, unless sufficient cause is shown against such discharge. R.S., c. 142, s. 19.

29. Form valid.—The form set forth in the second schedule to this Act, or forms as near thereto as circumstance admit of, may be used in the matters to which such forms refer, and, when used, shall be deemed valid. R.S., c. 142, s. 20.

Re Gaynor & Greene (1905), 10 C. C. C., 154.

EXTRADITION FROM A FOREIGN STATE.

30. Requisition for a fugitive out of Canada, how made.—A requisition for the surrender of a fugitive criminal from Canada, who is or is suspected to be in any foreign state with which there is an extradition arrangement, may be made by the Minister of Justice,—

(a) to a consular officer of that state resident at Ottawa; or,

(b) to the Minister of Justice or any other minister of that state, through the diplomatic representative of His Majesty in that state.

2. **By arrangement.**—If neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement. R.S., c. 142, s. 21.

31. Conveyance of fugitive surrendered.—Any person accused or convicted of an extradition crime, who is surrendered by a foreign state, may, under the warrant for his surrender issued in such foreign state, be brought into Canada and delivered to the proper authorities, to be dealt with according to law. R.S., c. 142, s. 22.

R. v. Aerman (1854), 4 C. P., 288; R. v. Cunningham (1885), Cassel's S. C. Digest, 195; R. v. Waddell (1886), 6 C. L. T., 598.

32. Fugitives surrendered by a foreign state not punishable contrary to arrangement.—Whenever any person accused or convicted of an extradition crime is surrendered by a

foreign state, in pursuance of any extradition arrangement, such person shall not, until after he has been restored or has had an opportunity of returning to the foreign state within the meaning of the arrangement, be subject, in contravention of any of the terms of the arrangement, to any prosecution or punishment in Canada for any other offence committed prior to his surrender, for which he should not, under the arrangement, be prosecuted. R.S., c. 142, s. 23.

R. v. Waddell, 25 N. B., 93.

LIST OF CRIMES.

33. How list of crimes in schedule shall be construed.—The list of crimes in the first schedule to this Act shall be construed according to the law existing in Canada at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act, and as including only such crimes, of the descriptions comprised in the list, as are, under that law, indictable offences. R.S., c. 142, s. 24.

PART II.

EXTRADITION IRRESPECTIVE OF TREATY.

34. This Part to come into force upon proclamation.—The provisions of this Part shall not come into force, with respect to fugitive offenders from any foreign state, until this Part shall have been declared by proclamation of the Governor General to be in force and effect as regards such foreign state, from and after a day to be named in such proclamation.

2. **Proclamation may be revoked.**—If by proclamation the Governor General declares this Part to be no longer in operation as regards any foreign state, the provisions thereof shall cease to have any force or effect with respect to fugitive offenders from such state from and after a day to be named in such proclamation. 52 V., c. 36, s. 4.

35. Application of this Part.—The provisions of this Part shall apply to any crime mentioned in the third schedule to this Act committed after the coming into force of this Part, as regards any foreign state to which this Part has been by proclamation declared to apply. 52 V., c. 36, s. 3.

36. Extradition where no arrangement, or if crime not included.—In case no extradition arrangement exists between His Majesty and a foreign state, or in case such an extradition arrangement, extending to Canada, exists between His Majesty and a foreign state, but does not include the crimes mentioned in the third schedule to this Act, it shall, nevertheless, be lawful for the Minister of Justice to issue his warrant for the surrender to such foreign state of any fugitive offender from such foreign state charged with or convicted of any of the crimes mentioned in the said schedule.

2. **Procedure under Part I.**—The arrest, committal, detention, surrender and conveyance out of Canada of such fugitive offender shall be governed by the provisions of Part I. of this Act, and all the provisions of the said Part shall apply to all steps and proceedings in relation to such arrest, committal, detention, surrender and conveyance out of Canada in the same manner and to the same extent as they would apply if the said crimes were included and specified in an extradition arrangement between His Majesty and the foreign state, extending to Canada. 52 V., c. 36, s. 1.

37. As to payment of expenses.—All expenses connected with the arrest, committal, detention, surrender and conveyance out of Canada of any fugitive offender under this Part shall be borne by the foreign state applying for the surrender of such fugitive offender. 52 V., c. 36, s. 2.

38. Law of Canada to govern as to crimes.—The list of crimes in the third schedule to this Act shall be construed according to the law existing in Canada at the date of the commission of the alleged crime, whether by common law or by statute, and as including only such crimes, of the description comprised in the list, as are, under that law, indictable offences. 52 V., c. 36, s. 3.

Re Gross (1898), 2 C. C. C., 67.

39. When warrant may not be issued.—No warrant shall issue under this Part for the extradition of any person to any state or country in which by the law in force in such state or country such person may be tried after such extradition for any other offence than that for which he has been extradited, unless an assurance shall first have been given by the executive authority of such state or country that the person whose extradition has been claimed will not be tried for any other offence than that on account of which such extradition has been claimed. 52 V., c. 36, s. 5.

FIRST SCHEDULE.

List of Crimes.

1. Murder, or attempt or conspiracy to murder;
2. Manslaughter;
3. Counterfeiting or altering money, and uttering counterfeit or altered money;
4. Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered;
5. Larceny or theft;
6. Embezzlement;
7. Obtaining money or goods, or valuable securities, by false pretenses;
8. Crimes against bankruptcy or insolvency law;
9. Fraud by a bailee, banker, agent, factor, trustee, or by a director or member or officer of any company, which fraud is made criminal by any Act for the time being in force;
10. Rape;
11. Abduction;
12. Child stealing;
13. Kidnapping;
14. False imprisonment;
15. Burglary, house-breaking or shop-breaking;
16. Arson;
17. Robbery;
18. Threats, by letter or otherwise, with intent to extort;
19. Perjury or subornation of perjury;
20. Piracy by municipal law or law of nations, committed on board of or against a vessel of a foreign state;
21. Criminal scuttling or destroying such a vessel at sea, whether on the high seas or on the great lakes of North America, or attempting or conspiring to do so;
22. Assault on board such vessel at sea, whether on the high seas or on the great lakes of North America, with intent to destroy life or to do grievous bodily harm;
23. Revolt, or conspiracy to revolt, by two or more persons on board such a vessel at sea, whether on the high seas or on the great lakes of North America, against the authority of the master;
24. Any offence under,—

(a) Part VI, of the Criminal Code, except sections 307 to 312 inclusive, and sections 317 to 334 inclusive;

(b) Part VII. of the Criminal Code, except sections 408 and 409, 416 to 418 inclusive, 429 to 444 inclusive, and sections 486 to 508 inclusive;

(c) Part VIII. of the Criminal Code, except sections 516, 519, 524, 527, 529 and 538, and sections 542 to 545 inclusive; and,

(d) Part IX. of the Criminal Code;

and which are not included in any foregoing portion of this schedule.

25. Any offence which is, in the case of the principal offender, included in any foregoing portion of this schedule, and for which the fugitive criminal, though not the principal, is liable to be tried or punished as if he were the principal. R.S., c. 142, sch. 1.

SECOND SCHEDULE.

FORM ONE.

Form of Warrant of Apprehension.

——:

To wit:—

To all and each of the constables of

Whereas it has been shown to the undersigned, a judge under the Extradition Act, that

late of is accused (*or* convicted) of the crime of within the jurisdiction of

This is therefore to command you, in His Majesty's name, forthwith to apprehend the said and to bring him before me, or some other judge under the said Act, to be further dealt with according to law; for which this shall be your warrant.

Given under my hand and seal at this day of A.D.

FORM TWO.

Form of Warrant of Committal.

——:

To wit:—

To one of the constables of and to the keeper of the at

Be it remembered that on this day of in the year at is brought before me a judge under the

Extradition Act, ... who has been apprehended under the said Act, to be dealt with according to law; and forasmuch as I have determined that he should be surrendered in pursuance of the said Act, on the ground of his being accused (*or* convicted) of the crime of
within the jurisdiction of

This is therefore to command you the said constable, in His Majesty's name, forthwith to convey and deliver the said
into the custody of the keeper of the at and you, the said keeper to receive the said
into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Act, for which this shall be your warrant.

Given under my hand and seal at this day of A.D.

FORM THREE.

Form of Order of Minister of Justice for Surrender.

To the keeper of the at and to

Whereas late of accused (*or* convicted) of the crime of within the jurisdiction of was delivered into the custody of you, the keeper of the at by warrant dated pursuant to the Extradition Act.

Now I do hereby, in pursuance of the said Act, order you, the said keeper, to deliver the said
into the custody of the said ; and I command you, the said to receive the said into your custody, and to convey him within the jurisdiction of the said and there place him in the custody of any person or persons (*or* of) appointed by the said to receive him; for which this shall be your warrant.

Given under the hand and seal of the undersigned Minister of Justice of Canada, this day of A.D.

R.S., c. 142, sch. 2.

THIRD SCHEDULE.

(1) Murder, or attempt or conspiracy to murder;
(2) Manslaughter;
(3) Counterfeiting or altering money and uttering counterfeit or altered money;
(4) Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered;
(5) Larceny or theft;
(6) Embezzlement;
(7) Obtaining money or goods or valuable securities by false pretences;
(8) Rape;
(9) Abduction; indecent assault;
(10) Child stealing;
(11) Kidnapping;
(12) Burglary, house breaking or shop breaking;
(13) Arson;
(14) Robbery;
(15) Fraud committed by a bailee, banker, agent, factor, trustee or member or public officer of any company or municipal corporation, made criminal by any law for the time being in force;
(16) Any malicious act done with intent to endanger persons in a railway train;
(17) Piracy by municipal law or law of nations, committed on board of or against a vessel of a foreign state;
(18) Criminal scuttling or destroying such a vessel at sea, whether on the high seas or on the great lakes of North America, or attempting or conspiring to do so;
(19) Assault on board such a vessel at sea, whether on the high seas or on the great lakes of North America, with intent to destroy life or to do grievous bodily harm;
(20) Revolt, or conspiracy to revolt, by two or more persons, on board such a vessel at sea, whether on the high seas or on the great lakes of North America, against the authority of the master;
(21) Administering drugs or using instruments with intent to procure the miscarriage of a woman;
(22) Any offence which is, in the case of the principal offender, included in any foregoing portion of this schedule, and for which the fugitive criminal, though not the principal, is liable to be tried or punished as if he were the principal. 52 V., c. 36, sch.

EXTRADITION TREATIES, DECLARATIONS AND CONVENTIONS OF GREAT BRITAIN.

ARGENTINE REPUBLIC	Treaty 22nd. May. 1889 (rat. 15th. Dec. 1893).
AUSTRIA-HUNGARY	Treaty of Dec. 3rd. 1873. Supplementary Treaty, 26th. June, 1901.
BELGIUM	Treaty of May 20th. 1876. Declarations of July 23rd. 1877, April 21st., 1887. Supplementary Treaty, 6th. March, 1902.
BOLIVIA	Treaty of November 4th., 1898.
BRAZIL	Treaty of November 13th., 1872.
CHILI	Treaty of August 22nd., 1898.
COLOMBIA	Treaty of October 27th., 1888.
CUBA	Treaty of May 10th., 1905.
DENMARK	Treaty of March 31st., 1873.
EQUADOR	Treaty of September 20th., 1880.
FRANCE	Treaty of August 14th., 1876.
GERMANY	Treaty of May 14th., 1872.
GUATEMALA	Treaty of July 4th., 1885.
HAYTI	Treaty of December 7th., 1874.
ITALY	Treaty of Feb. 5th., 1873, Decl. of May 7th., 1873.
LIBERIA	Treaty of December 16th., 1892.
LUXEMBURG	Treaty of November 24th., 1880.
MEXICO	Treaty of September 7th., 1886.
MONACO	Treaty of December 17th., 1891.
NETHERLANDS	Treaty of September 26th., 1898.
NICARAGUA	Treaty of April 19th., 1905.
ORANGE FREE STATE	Treaty of June 20th., 1890.
PORTUGAL	Treaty of 30th. Nov., 1892.
REPUBLIC OF SAN MARINO	Treaty of March 19th., 1900.
ROUMANIA	Treaty of March 21st., 1893.
RUSSIA	Treaty of November 24th., 1886.
SALVADOR	Treaty of June 23rd., 1881.
SERVIA	Treaty of June 15th., 1901.
SPAIN	Treaty of June 4th., 1878 and Feb. 19th., 1889.
SWEDEN AND NORWAY	Treaty of June 26th., 1873.
SWITZERLAND	Treaty of November 26th., 1880.

*TONGA	Art. IV. of Treaty of November 29th., 1879.
	Protocol of July 3rd., 1882.
TUNIS	Treaty of December 31st., 1889.
UNITED STATES	Art. X. of Treaty of August 9th., 1842.
	Blaine-Pauncefote Treaty of 12th. July, 1889
	Suppl'y Treaty (Pauncefote-Hay) 13 Dec., 1900.
URUGUAY	Treaty of March 26th., 1884, and supplementary Treaty 22nd., April, 1901.

*Ratification exchanged, 19th. February, 1886. Tongan Subjects escaping to British Territory.

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